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federal register

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

CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Executive Order 12529 of August 14, 1985

President's Commission on Americans Outdoors

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to revise the name of a presidential advisory commission to better describe its areas of responsibility, and to extend the date within which the commission must complete its responsibilities, it is hereby ordered that Executive Order No. 12503 is amended as follows:

The title of the Order and Section 1(a) are amended by deleting "Presidential Commission on Outdoor Recreation Resources Review" and inserting in lieu thereof "President's Commission on Americans Outdoors"; and

Section 4(b) of the Order is revised to provide as follows:

"The Commission shall submit its report no later than December 31, 1986, and shall terminate 30 days after its report.".

Ronald Reagan

THE WHITE HOUSE,
August 14, 1985.

[FR Doc. 85-19905
Filed 8-16-85; 10:51 am]
Billing code 3195-01-M

Editorial note: For the White House announcement on the appointment of the Chairman and members of the President's Commission on Americans Outdoors, which was released on August 15, 1985, see the *Weekly Compilation of Presidential Documents* (vol. 21, no. 33).

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1772

[REA Bulletin 345–185, REA Form 397g]

Performance Specification for Line Concentrators

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: REA hereby amends 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing a revised Bulletin 345–185, REA Form 397g, Performance Specification for Line Concentrators. The revised form reflects the rapid pace of changes in this equipment and includes new developments considered advantageous to REA borrowers and their subscribers. All manufacturers of line concentrator equipment, and eventually many REA borrowers, will be impacted in that REA's requirements will reflect state of the art technology and will thus permit the construction of the best, most cost-effective facilities possible.

EFFECTIVE DATE: July 29, 1985.

FOR FURTHER INFORMATION CONTACT: C. F. Buster, Jr., Acting Director Telecommunications Engineering and Standards Division, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8663. The Final Impact Analysis describing the options considered in developing this rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA hereby amends 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing a revised Bulletin 345–185, REA Form 397g, Performance Specification for Line Concentrators. This action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity and therefore has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans.

Background

The present REA Form 397g was developed in May 1978. Since that time, developments in technology have rendered the requirements contained therein obsolescent. The concentrator is an efficient means of providing service to small clusters of subscribers in less densely populated areas. Thus use of the latest technology in concentrators will permit REA borrowers to provide the best, most cost-effective service possible to rural America.

This revised specification sets standards for electrical parameters which are important for satisfactory operation. These minimum requirements will not affect the current designs or manufacturing techniques of concentrators.

REA publised a Notice of Proposed Rulemaking in the Federal Register on July 10, 1984, Volume 49, No. 133, page 28071. There were no comments as a result of this proposal.

List of Subjects in 7 CFR Part 1772

Loan programs—communications, telecommunications, incorporations by reference.

In view of the above, REA hereby amends 7 CFR Part 1772.

1. The authority citation for 7 CFR Part 1772 continues to read:

Authority: 7 U.S.C. 901 et seq.

2. Section 1772.97 is amended by revising the entry 345–185 to read as follows:

§ 1772.97 Incorporation by reference of telephone standards and specifications.

* * * * *

345–185 . . . . . Form 397g . . . . . Performance Specification for Line Concentrators.

* * * * *

Dated: July 29, 1985.

Jack Van Mark,

Acting Administrator.

[FR Doc. 85–18843 Filed 8–16–85; 8:45 am]

BILLING CODE 3510–15–M

Farmers Home Administration

7 CFR Part 1942

Community Facility Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Community Facilities regulations to renumber a form. This action is necessary in order to number the form according to FmHA's revised numbering system. The effect of this action is to change from a dual numbering system to a single system.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Bonnie Justice, Loan Specialist, Community Facilities Division, Farmers Home Administration, USDA, Room 6304 South Building, 14th and Independence Avenue, SW, Washington, D.C. 20250, telephone: (202) 382–1490.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal Agency management in that is does not affect either FmHA borrowers in particular or the public in general. Form FmHA 442–43 is being renumbered to Form FmHA 1942–43.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action however, is not published for proposed rulemaking

since it involves only internal Agency management, and publication for comments is unnecessary.

The FmHA program and projects which are affected by these instructions are subject to State and local review under section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

This change has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmFA 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, Pub. L. 91–190, an Environmental Impact Statement is not required.

The Catalog of Federal Domestic Assistance program affected is No. 10.423, Community Facilities Loans.

List of Subjects in 7 CFR Part 1942

Business and industry, Community development, Community facilities, Grant programs—Housing and community development, Industrial park, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

Therefore, Part 1942 of Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

§ 1942.5 [Amended]

2. Section 1942.5 is amended by changing the form number from "442–43" to "1942–43" in the first sentence of paragraph (a)(1), paragraph (a)(2), the first sentence of paragraph (a)(3), paragraph (b)(1)(ii)(C), and the second and fourth sentences of paragraph (c).

§ 1942.17 [Amended]

3. Section 1942.17 is amended by changing the form number from "442–43" to "1942–43" in the sixth sentence of paragraph (f)(1).

Subpart G—Industrial Development Grants

§ 1942.311 [Amended]

4. Section 1942–311 is amended by changing the form number from "442–43" to "1942–43" in paragraph (a)(2).

Dated: June 24, 1985.

Charles A. Jewell,

Acting Associate Administrator, Farmers Home Administration.

[FR Doc. 85–19700 Filed 8–16–85; 8:45 am]

BILLING CODE 3410–07–M

Food Safety and Inspection Service

9 CFR Part 390

[Docket No. 82–002C]

Freedom of Information; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule which was issued by the Food Safety and Inspection Servcie (FSIS) and the Agricultural Marketing Service (AMS), USDA. That rule amended certain sections of Titles 7 and 9 of the Code of Federal Regulations to reflect a departmental reorganization. This correction will only affect that portion of the document pertaining to Title 9 of the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Irwin Dubinsky, Acting Director, Policy Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6735.

SUPPLEMENTARY INFORMATION: On December 31, 1981, the Food Safety and Inspection Service and the Agricultural Marketing Service jointly published a final rule to amend certain sections of Titles 7 and 9 of the Code of Federal Regulations to reflect changes resulting from a June 17, 1981, Department reorganization (46 FR 63203; correction notice published February 4, 1982 (47 FR 5196)).

This document corrects an inadvertent error appearing on page 63204 of the December 31, 1981, **Federal Register,** in the amendments to Title 9 Chapter III, of the Code of Federal Regulations, Item 4. The first sentence of § 390.1 refers to Freedom of Information Act (FOIA) provisions in Title 7 as provisions "of this title." Upon transfer of the paragraph from Title 7 to Title 9 of the Code of Federal Regulations, "of this title" should have been changed to "of Title 7."

§ 390.11 [Amended]

FR Doc. 81–37220 in the issue of December 31, 1981, is corrected on page 63204, column one by adding the following item 6 to read as follows:

6. The first sentence of § 390.1 is revised to read as follows:

These regulations are issued pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), and in accordance with the directives of the Department of Agriculture regulations in Part 1, Subpart A, of Title 7. * * *

* * * * *

All other information contained in the final rule remains unchanged.

Done at Washington, DC on August 9, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85–19616 Filed 8–16–85; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 85–12]

Rules, Policies and Procedures for Corporate Activities; Bank Service Corporations

AGENCY: Office of the Comptroller of the Currency; Treasury.

ACTION: Final rule.

SUMMARY: Section 709 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320, October 15, 1982) amended the Bank Service Corporation Act. The amended Act states that under certain circumstances national banks must obtain the prior approval of the Office of the Comptroller of the Currency (Office) for an investment in a bank service corporation. This final rule codifies the procedure and process for obtaining Office approval.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Director, Licensing Policy and Systems, or Mickey Fenyk-King, Financial Analyst, Licensing Policy and Systems, Office of the Comptroller of the Currency, (202) 447–1184.

SUPPLEMENTARY INFORMATION:

Purpose

The Bank Service Corporation Act (Act) codified at 12 U.S.C. 1861 *et seq.*, was significantly amended by section 709 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320, October 15, 1982). This final rule carries out the objectives of Section 709, and provides more specific and uniform guidance to national banks to obtain Office approval for investing in bank service corporations.

Summary of the Comments

On October 3, 1984, the Office published a notice of proposed rulemaking (49 FR 39066) describing proposed Office policies governing bank service corporations and setting forth proposed procedures for obtaining Office approval. One commenter responded to the proposed rule. That commenter felt that the proposed 90-day Office decision-making period is too long. The 90-day period is provided for in the amended Bank Service Corporation Act, 12 U.S.C. 1861 *et seq.* The Office has limited experience in processing this type of notification of investment and therefore has no basis for determining whether the decision period can be reduced to less than that provided in the Act. If the Office finds that it can respond to a national bank's request to invest in a bank service corporation in a more timely manner, it will. The Office does not intend to hold or delay action on any request, but will act as expeditiously as the case allows. For this reason the final rule retains the 90-day time limit.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Office finds that the final rule will not have a significant impact on a substantial number of small entities.

Executive Order 12291

This rule is not classified as a "major rule" and therefore does not require a regulatory impact analysis.

Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget under control number 1557-0163.

List of Subjects in 12 CFR Part 5

National banks, Bank service corporations.

Authority and Issuance

For the reasons set forth in the preamble, the Comptroller of the Currency amends 12 CFR Part 5 to read as follows:

PART 5—[AMENDED]

1. The authority citation for Part 5—Rules, Policies, and Procedures for Corporate Activities is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93(a).

2. A new § 5.35 is added to read as follows:

§ 5.35 Bank service corporations.

(a) *Authority.* 12 U.S.C. 1867, 93a.

(b) *Rules of General Applicability.* Sections 5.8, 5.10, and 5.11 do not apply to national bank requests for approval to invest in bank service corporations.

(c) *Definitions.* The terms "bank service corporation," "depository institution," "invest," and "principal investor," as used in this section, have the same meaning and content as given such terms in 12 U.S.C. 1861.

(d) *General.* National banks are authorized to invest in bank service corporations pursuant to 12 U.S.C. 1862. However, a national bank may not invest more than ten percent of its paid-in and unimpaired capital and its unimpaired surplus in a bank service corporation. Also, a national bank may not invest more than five percent of its total assets in bank service corporations.

(e) *Policy and Procedure.* The Office will consider a national bank's request under 12 U.S.C. 1865(a) to invest in bank service corporations in accordance with the following requirements.

(1) *Filing Letter Requests for Approval.* (i) Approval is required as follows:

(A) Office approval is required for a national bank to invest in a bank service corporation that performs any service described in 12 U.S.C. 1864 (d) or (e).

(B) Federal Reserve Board approval is required for a national bank to invest in a bank service corporation that performs any service described in 12 U.S.C. 1864(f).

(C) If a bank service corporation in which a national bank proposes to invest performs a service that is authorized both by 12 U.S.C. 1864 (d) or (e) and 12 U.S.C. 1864(f), the bank should determine which subsection it desires to proceed under and must receive approval as described in either paragraph (e)(1)(i)(A) or (e)(1)(i)(B) of this section, depending upon its choice.

(D) No regulatory approval is required for a national bank to invest in a bank service corporation that will perform only the services described in 12 U.S.C. 1863 and performs such services only for depository institutions.

(ii)(A) When Office approval is required, the national bank shall file a letter with the District Office in the district where the principal office of the bank is located. The letter must describe the name and location of the bank service corporation and the services to be performed. In addition, the letter must demonstrate that the amount invested in a bank service corporation is 10 percent or less of the bank's paid-in and unimpaired capital and unimpaired surplus and that the total amount invested in all bank service corporations is 5 percent or less of total assets. Finally, the letter should demonstrate, pursuant to 12 U.S.C. 1864 (b) and (d) or (e), that the investing banks are all located in the same state; and that the services to be performed by the bank service corporation are to be performed only at locations in the state at which the national bank shareholder(s) could be authorized to perform such services.

(B) The Office may require additional information from any applicant bank. In particular, for national banks subject to supervisory concerns, the Office may require additional information including: (*1*) the financial and managerial resources and future prospects of the bank and bank service corporation, including the financial capability of the bank to make the proposed investment; (*2*) any information needed to review and address unsafe and unsound banking practices; and (*3*) any other information the Office considers appropriate for the circumstances.

(2) *90-Day Decision Time Period.* The Office will render a final decision on the proposed investment within 90 days of the date the Office acknowledges receipt of a technically complete letter requesting approval. A technically complete letter will include the information required under paragraph (e)(1)(ii) of this section. If the Office fails to render a decision within 90 days after the date the Office acknowledges receipt of a technically complete letter, the investment may be deemed approved.

(3) *Conditions for Approval.* For banks not subject to special supervisory concerns, approval for investment in a bank service corporation generally will be granted provided that: (i) The services performed by the bank service corporation are legally permissible for a national bank; (ii) the services are performed only at locations in the state where the investing national bank(s) could be authorized to perform such services; (iii) the amount of the investment conforms with the 10 percent and 5 percent limitations noted in paragraph (d) of this section; and (iv) the investing banks are all located in the same state.

For banks subject to special supervisory concerns the request may be denied or it may be approved subject to conditions considered appropriate by the Office.

(f) *Examination and Supervision.* Each bank service corporation in which a national bank is the principal investor shall be subject to examination and supervision by the Office in the same

manner and to the same extent as the shareholder bank.

(g) *Forms.* None.

(Approved by the Office of Management and Budget under Control Number 1557-0163)

Dated: June 25, 1985.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 85-19582 Filed 8-16-85; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-36-AD; Amdt. 39-5123]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection of the fuselage skin lap splice between body stations 340 and 400 at stringers S6-L and S6-R on certain Boeing Model 747 series airplanes. This action is prompted by the recent finding of cracks of up to 18½ inches long on three airplanes. This action is necessary to ensure that an undetected crack will not result in sudden loss of cabin pressurization and the inability to withstand fail-safe loads.

EFFECTIVE DATE: September 26, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection for and subsequent repair of cracked structure was published in the **Federal Register** on May 3, 1985 (50 FR 18874). The comment period for the proposal closed on June 24, 1985.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

A comment from the Air Transport Association (ATA) of America requested that the "crack" referred to in paragraph A. (4), should read "visual cracks." The FAA concurs that paragraph A. (4) should refer to cracks which are visible and the paragraph has been revised. In addition, paragraphs A. (3) and A. (4) have been revised to clarify crack length measurement. This is necessary because part of the .15 inch limit length of the crack, as described in Boeing Service Bulletin 747-53-2253, dated December 14, 1984, may be hidden under the head of the fastener. The visible crack length that extends from the edge of the fastener countersink must not exceed .10 inch without a modification.

Another commenter requested that the requirements of paragraph A. (4) be relaxed as they are unwarranted and could lead to grounding an airplane for a skin crack which is barely visible. Paragraph A. (4) requires modification prior to the next pressurized flight if a crack extends more than .15 inch from the edge of the hole. The FAA does not concur with the need to relax the requirements of paragraph A. (4) for two reasons: (1) This is a multiple crack initiation condition, with approximately 17 fasteners per row between each 20-inch frame station, and cracks in this area have the potential of joining up; and (2) .15 inch has been determined to be the critical crack length. Also, the inspections called for in paragraphs A. (1), A. (2), and A. (3) are specifically designed to alert the operator of impending maintenance during the crack growth period, which is a gradual process.

Another commenter stated that on some of the affected airplanes a crew door(s) may intersect the lap splices prior to the body station 400 frame, and suggested that there be a clarification of the final rule in this regard. The FAA concurs with the need for clarification, and paragraphs A. and B. of the final rule have been revised to acknowledge the presence of the door(s). The commenter also requested that training flights where cabin pressure differential is less than 1.5 psi not be counted in determinations of thresholds and repeat intervals. The FAA concurs and paragraph F. of the final rule has been added to reflect this change.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

It is estimated that 151 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 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 on U.S. operators is estimated to be $48,320 for the initial compliance with the AD.

For 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, Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, 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; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, certificated in any category, as listed in Boeing Service Bulletin 747-53-2253, dated December 14, 1984. To prevent failure of the fuselage skin lip splice between body stations 340 and 400, at stringer S6-L and S6-R, accomplish the following, unless already accomplished:

A. For airplanes that have not been modified in accordance with Boeing Service Bulletin 747-53-2253, dated December 14, 1984, or later FAA approved revisions: within the next 1,000 landings after the effective date of this AD or prior to the accumulation of 10,000 landings, whichever is later, use high frequency eddy-current procedures to inspect for cracking at the fuselage skin lap splice between body stations 340 and 400, or aft as far as the crew door, at stringers S6-L and S6-R, in accordance with Boeing Service Bulletin 747-53-2253, dated December 14, 1984, or later FAA approved revisions.

(1) If no cracking is indicated, repeat the high frequency eddy current inspection at intervals not to exceed 5,000 landings.

(2) If a crack is indicated but is not visible externally, repeat a visual detailed inspection using 10X magnification at intervals not to exceed 500 landings.

(3) If a crack is visible and is less than .10 inch long, measured from the edge of the countersink, repeat a visual detailed inspection using 10X magnification at intervals not to exceed 100 landings.

(4) If a crack is visible and is more than .10 inch long measured from the edge of the countersink, modify in accordance with Boeing Service Bulletin 747–53–2253, dated December 14, 1984, or later FAA approved revisions, prior to the next pressurized flight. Inspections in accordance with paragraph B., below, are to continue after modification.

B. For airplanes that have been modified in accordance with Boeing Service Bulletin 747–53–2253, dated December 14, 1984, or later FAA approved revisions: within the next 2,500 landings after the effective date of this AD or prior to the accumulation of 10,000 landings after the modification, whichever is later, and thereafter at intervals not to exceed 5,000 landings, use high frequency eddy-current procedures to inspect for cracking at the fuselage skin lap splice between body stations 340 and 400, of aft as far as the crew door, at stringers S6–L and S6–R, in accordance with Boeing Service Bulletin 747–53–2253, dated December 14, 1984, or later FAA approved revisions. If a crack is found, repair in accordance with an FAA approved method and continue to inspect.

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/or modifications required by this AD.

E. Upon the request of an operator, an FAA Principal Maintenance Inspector subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD, if the request contains substantiating data to justify the change for that operator.

F. Flight cycles during which the cabin pressure differential does not exceed 1.5 psi do not need to be counted when determining the number of landings on an airplane for the inspection requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 26, 1985.

Issued in Seattle, Washington, on August 12, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–19665 Filed 8–16–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 82–CEF–1–AD; Amendment 39–4360]

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. (MHI) MU–2B, –10, –15, –20, –25, –26, –30, –35, and –36 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 82–08–02, Amendment 39–4360 (47 FR 15569), applicable to Mitsubishi Heavy Industries, Ltd. (MHI) MU–2B, –10, –15, –20, –25, –26, –30, –35, and –36 airplanes. This correction is necessary because the identification of the basic model, MU–2B, was inadvertently omitted from the applicability statement when the AD was published in the **Federal Register**.

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. 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: Subsequent to the issuance of AD 82–08–02, Amendment 39–4360 (47 FR 15569), applicable to MHI MU–2B, –10, –15, –20, –25, –26, –30, –35, and –36 airplanes, the FAA found that the identification of the basic model, MU–2B, was inadvertently omitted from the applicability statement when the AD was published in the **Federal Register**. This omission has raised questions as to the applicability of the subject AD. The serial numbers listed in the applicability statement are correct and do include the MU–2B as intended. Since the issuance of AD 82–08–02 the Honolulu Aircraft Certification Office has been closed. Accordingly, Paragraph C is also changed to reflect the current FAA organization. Therefore, action is taken herein to make these corrections. Since this action is clarifying in nature, notice and procedure hereon are unnecessary and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air Transportation, Aviation Safety, Aircraft, Safety.

PART 39—[AMENDED]

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 11.89.

2. By correcting the following AD:

In FR Doc. 82–9667 (47 FR 15569), appearing on page 15569 in the **Federal Register** of April 12, 1982, make the following corrections:

1. Correct the applicability statement to include the basic model MU–2B, by changing the statement to read as follows:

Mitsubishi Heavy Industries, Ltd. (MHI). Applies to MHI Models MU–2B, –10, –15, –20, –25, –26 (S/N 005 thru 347, except 313 and 321) and MU–2B–30, –35, –36 (S/N 501 thru 696, except S/N 652 and 661) airplanes certificated in any category.

2. Change Paragraph (C) to read as follows:

(C) An alternative means of compliance with this AD may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

Issued in Kansas City, Missouri, on August 6, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85–19664 Filed 8–16–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 85–AWA–33]

Establishment of Restricted Area R–4009, Thurmont, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R–4009 in the state of Maryland to enhance security and safety at the Naval Support Facility, Thurmont, MD.

EFFECTIVE DATE: 0901 G.m.t., August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW.,

Washington, DC 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

History

On June 27, 1985, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to supplement the special use airspace of Prohibited Area P–40 which is currently in effect at the Naval Support Facility in Thurmont, MD (50 FR 26583). The additional airspace was proposed to have the same lateral dimensions as P–40, i.e., a radius of 3 miles, and vertical limits from 5,000 feet above mean sea level (MSL) (the ceiling of P–40) up to 12,500 feet MSL. The proposal was intended to provide adequate safeguards for aeronautical activity at the Naval Support Facility and to separate nonparticipating traffic from that activity as well as to supplement the security purposes of P–40. The Aircraft Owners and Pilots Association (AOPA) submitted comments suggesting that the proposed special use airspace be reconfigured as follows: AOPA suggested that Prohibited Area P–40 be reduced in lateral size from a 3 to 2-mile radius and that its vertical limit remain the same. Under AOPA's proposal, the new Restricted Area would be established between the 2 and 3-mile radius around P–40 and would extend from the surface up to the vertical limit of P–40. Additionally, the new Restricted Area would lie over P–40 with a lateral limit of 3 NM and extend from 5,000 to 12,500 feet MSL. AOPA's proposal was based on the contention first that their proposed Restricted Area would provide an adequate security buffer, and second, that the charting of the Restricted Area proposed by the FAA, with the same lateral dimensions for P–40 and the overlying Restricted Area, would lead to pilot misunderstanding and confusion. AOPA believed the pilot would not be able to distinguish between the boundaries of the Prohibited and Restricted Area having the exact same lateral dimensions. The FAA does not concur with the AOPA suggestion. A reduction in the lateral limits of the Prohibited Area would be counter to the national security needs associated with P–40. In addition, the establishment of a 1-mile wide Restricted Area around the Prohibited Area provides neither air traffic control nor airspace users any practical or additional degree of access to usable airspace. With respect to charting, P–40 and R–4009 will be distinguished clearly on the chart by the designated numbers and a note indicating that R–4009 overlies P–40 from 5,000 feet MSL up to and including 12,500 feet MSL. Section 73.40 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations establishes Restricted Area R–4009 in the state of Maryland to enhance security and safety at the Naval Support Facility, Thurmond, MD, and to segregate nonparticipating aircraft from potentially hazardous air operations at the facility. The boundaries of R–4009 will encompass that airspace within a 3 NM radius of the Naval Support Facility. The designated altitudes are from 5,000 feet MSL to 12,500 feet MSL. Operations through or within R–4009 would be subject to prior ATC authorization. Authorizations may be requested from the Washington Air Route Traffic Control Center which serves as both the using and controlling agency.

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.

In consideration of the national security interest in implementing this rule, I find that good cause exists for making this rule effective on the next charting date.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 73.40 is amended as follows:

R–4009 Thurmont, MD

Boundaries. That airspace within a 3 NM radius of the Naval Support Facility (lat. 39°38'53" N., long. 77°28'01" W.).

Designated altitudes. 5,000 feet MSL to 12,500 feet MSL.

Time of designation. Continuous; Transit may be authorized by Washington ARTCC when conditions permit.

Controlling agency. FAA, Washington ARTCC.

Using agency. FAA, Washington ARTCC.

Issued in Washington, D.C., on August 13, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–19695 Filed 8–16–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 84C–0098]

Poly(Hydroxyethyl Methacrylate)-Dye Copolymers; Listing of Color Additives for Coloring Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of the colored polymeric reaction product formed by chemically bonding Reactive Blue No. 4 with poly(hydroxyethyl methacrylate) to produce tinted contact lenses. This action responds to a petition filed by Bausch & Lomb, Inc.

DATES: Effective September 19, 1985, except as to any provisions that may be stayed by the filing of proper objectives; objections by September 18, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the Federal Register of April 19, 1984 (49 FR 15624), FDA announced that a color additive petition (CAP 4C0179) had been filed by Bausch & Lomb, Inc., Optics Center, P.O

Box 450, Rochester, NY 14692, proposing that § 73.3121 *Poly(hydroxyethyl methacrylate)-dye copolymers* (21 CFR 73.3121) of the color additive regulations be amended to provide for the safe use of Reactive Blue No. 4 [2-anthracenesulfonic acid, 1-amino-4-[3-[(4,6-dichloro-s-triazin-2-yl)amino]-4-sulfoanilino]-9,10-dihydro-9,10-dioxo, disodium salt] (CAS Reg. No. 4499-01-8) chemically bonded to the lens polymer for coloring contact lenses. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

II. Applicability of the Act

The colored polymeric reaction product that is the subject of this petition is formed when the dye is bonded with poly(hydroxyethyl methacrylate) on the front surface of a contact lens to form a thin layer of colored polymeric material on that surface. This polymeric material colors the contact lens.

Under the Medical Device Amendments of 1976 (Pub. L. 94-295), a color additive for use in a medical device must be listed when the color additive comes in direct contact with the body for a significant period of time (section 706(a) of the act).

The polymeric reaction product of the reactive dye and poly(hydroxyethyl methacrylate), identified as "poly(hydroxyethyl methacrylate)-dye copolymer" in § 73.3121, is a color additive within the meaning of section 201(t) of the act (21 U.S.C. 321(t)) because it is a substance made by a process of synthesis or similar artifice, and because it is capable of imparting color to food, drugs, cosmetics, or the human body if added or applied thereto. In the use considered here, the reactive dye is merely a starting material and not a color additive subject to section 706 of the act. In the reaction process that occurs in bonding the reactive dye to the poly(hydroxyethyl methacrylate), the reactive dye ceases to exist as a separate entity.

The use of the poly(hydroxyethyl methacrylate)-dye copolymer as a color additive in contact lenses is subject to regulation under section 706(a) of the act. The lenses that have this colored polymeric material on their front surfaces are intended to be placed on the eye for several hours a day, each day, for 1 year or more. The color additive accordingly will come in direct contact with the body for a significant period of time. Consequently, the use of the color additive presented in the petition now before the agency is subject to the statutory listing requirements.

III. Analysis of Data

To establish that the color additive is safe for use in contact lenses, the petitioner submitted various toxicity data. In a primary ocular irritation study in rabbits with saline and cottonseed oil extracts of lens material containing the color additive, neither the saline nor the cottonseed oil extracts of the tinted lens material caused ocular irritation under the conditions of the test. The petitioner also conducted cytotoxicity studies of tinted lens material and of saline and cottonseed oil extracts of the tinted lens material, using L-929 mouse fibroblast cells. In these tests, neither the tinted lens material nor the extracts were cytotoxic.

FDA has concluded, that as a worst case, any material migrating from the color additive in the lens would not pose a greater safety concern than if the estimated maximum amount of reactive dye was placed in the lens unbound, and all of the reactive dye was to migrate into the eye over a 1-year period. The maximum amount of reactive dye available for migration would be equivalent to 50 micrograms of reactive dye starting materials per lens or a total of 270 nanograms per day for both eyes. The petitioner conducted a cytotoxicity study in which serial dilutions of the reactive dye were applied directly to L-929 mouse fibroblast cells. No toxic effect was seen at a concentration approximately 2,500 times the concentration in the eyes if 270 nanograms migrated into the eyes per day.

IV. Conclusion

On the basis of data contained in the petition, and other relevant material, FDA concludes that there is a reasonable certainty that no harm will result from the proposed use of the reaction product formed by bonding poly(hydroxyethyl methacrylate) with Reactive Blue No. 4 for coloring contact lenses. On this basis also, the agency concludes that this color additive is suitable for its intended use. The agency, therefore, is amending § 73.3121 by adding Reactive Blue No. 4 to this list of reactive dyes in paragraph (a).

In addition, based on relevant data, FDA concludes that the safety margin (difference between the potential exposure to the dye and its highest observed no adverse effect level) is large enough to rule out any need for imposing a limitation on the amount of the color additive that may be present in the lens, beyond the limitation that only that amount necessary to accomplish the intended technical effect may be used. This color additive will also be subject to the requirement in § 73.3121(b) that the manufacturer wash the lens to remove any unbound reactive dye. On the basis of factors listed in § 71.20(b) (21 CFR 71.20(b)), the agency concludes that certification of the color additive is not necessary for the protection of the public health.

V. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), 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 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VI. Environmental Assessment

The agency has carefully considerd the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The Agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(5).

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before September 18, 1985 file with the Dockets Management Branch (address above) written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objection shall state the issues for the hearing and shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual

information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulations may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Notice of the filing of objections or lack thereof will be published in the **Federal Register**.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—[AMENDED]

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 73 is amended as follows:

1. The authority citation for 21 CFR Part 73 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. In § 73.3121 by revising the introductory text of paragraph (a), by removing the word "and" before, and the period after, paragraph (a)(5), and by adding new paragraph (a)(6), to read as follows:

§ 73.3121 Poly(hydroxyethyl methacrylate)-dye copolymers.

(a) *Identity.* The color additives are formed by reacting one or more of the reactive dyes listed in this paragraph with poly(hydroxyethyl methacrylate), so that the sulfate group (or groups) or chlorine substituent of the dye is replaced by an ether linkage to poly(hydroxyethyl methacrylate). The dyes that may be used along or in combination are

* * * * *

(6) Reactive Blue No. 4 [2-anthracenesulfonic acid, 1-amino-4-[3-[(4,6,-dichloro-s-triazin-2-yl)amino]-4-sulfoanilino]-9,10-dihydro-9,10-dioxo, disodium salt] (CAS Reg. No. 4499–01–8).

* * * * *

Dated: August 12, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–19672 Filed 8–16–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Hubbard Milling Co., providing for the manufacture of 5–, 10–, and 20–gram-per-pound tylosin premixes used to make completed feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–433–1414.

SUPPLEMENTARY INFORMATION: Hubbard Milling Co., 424 North Front St., Mankato, MN 56001, is the sponsor of a supplement to NADA 48–645 submitted on its behalf by Elanco Products Co. The supplemental NADA provides for the manufacture of new 5– and 20–gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The use of the currently approved 10-gram-per-pound premix is revised to include additional uses in swine, beef cattle, and chickens. The supplemental NADA is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.625 is amended by revising paragraph (b)(72) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(72) To 012190: 5, 10, 20, and 40 grams per pound, paragraph (f)(1)(i) through (vi) of this section.

* * * * *

Dated: August 13, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–19675 Filed 8–16–85; 8:45 am]

BILLING CODE 4160–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[OW-FRL-2882-3]

Ocean Dumping; Extension of Interim Site Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA today extends the interim designation of several existing dredged material disposal sites to allow completion of final rulemaking with full public participation. The interim designations of the following sites are extended until July 31, 1988, or until final rulemaking is completed, whichever is sooner: Portland, ME; San Juan, PR; Wilmington Harbor, NC; Charleston Harbor, SC; Savannah River, GA; Sabine-Neches, TX; Mouth of Columbia River, OR. This action is necessary to provide acceptable ocean dumping sites for the disposal of dredged material essential to maintain navigation until formal rulemaking is completed.

DATES: This action will become effective on August 19, 1985. Comments must be received on or before September 18, 1985.

ADDRESS: Send comments to: Paul Pan, Chief, Environmental Analysis Branch (WH–556M), EPA, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Paul Pan, 202/755–9231.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On September 19, 1980, the Administrator delegated the authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management, now the Assistant Administrator for Water.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.), was extended on January 16, 1980 (45 FR 3053 et seq.) and December 9, 1980 (45 FR 81042 et seq.), and was subsequently extended on February 7, 1983 (48 FR 5557 et seq.) and August 24, 1984 (49 FR 33647). That list established the Portland, ME; San Juan, PR; Wilmington Harbor, NC; Charleston Harbor, SC; Savannah River, GA; Sabine-Neches, TX; and Mouth of Columbia River, OR, sites as interim sites. The latest notice extended their period of use until July 31, 1985. Today's extension will continue the interim designations for these sites until July 31, 1988, or until final rulemaking is completed, whichever is sooner.

Preparation of Environmental Impact Statements (EIS's) for rulemaking has been completed on all of these sites. Designation of all consent decree sites ["National Wildlife Federation v. Costle," 629 F.2d 118 (D.C. Cir. 1980)] will proceed as expeditiously as possible. EPA cannot promulgate final designations for these sites and allow opportunity for full public participation within the existing deadline of July 31, 1985. The extensive opportunities for public participation are described in greater detail in the February 7, 1983, extension notice. Thirty-six months is a more realistic estimate of the amount of time EPA will need to complete the designation process for all of these sites. EPA expects to finish the designation process earlier for those sites where work is more advanced.

The Corps of Engineers has stated that they know of no adverse environmental impacts or substantive public opposition which would result from continued use of any of these historically used sites.

Continued designation of these interim dredged material disposal sites is necessary to assure the uninterrupted availability of the adjacent harbors to interstate and foreign commerce. These site designations expired on July 31, 1985. Accordingly, pursuant to the Administrative Procedure Act, 5 U.S.C 553(b)(3)(B), the Agency has determined that notice and public procedure on the interim designations, prior to their extension, is impracticable and contrary to the public interest. However, the Agency solicits public comment on the extension of the interim designations and will address any comments received in the final rulemakings designating these sites. For the same reasons, EPA has determined, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(3), that there is good cause to make this extension effective immediately.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this action does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this action does not necessitate preparation of a Regulatory Impact Analysis.

This action does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 7, 1985.

Henry Longest II,

Acting Assistant Administrator for Water.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

§ 228.12 [Amended]

2. In Part 228, paragraph (a)(1)(ii) of § 228.12 is amended by revising the introductory text and adding paragraphs (K) to (O) to read as follows:

* * * * *

(a) * * *

(1) * * *

(ii) Until such time as formal rulemaking is completed or until July 31, 1988, whichever is sooner:

* * * * *

(K) Portland, ME.

(L) San Juan, PR.

(M) Charleston/Savannah/Wilmington (3 sites): Wilmington Harbor, NC; Charleston Harbor, SC; and Savannah River, GA.

(N) Sabine-Neches, TX (4 sites)

(O) Mouth of Columbia River, OR (5 sites).

[FR Doc. 85-19423 Filed 8-16-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 90

[OST Docket No. 43344]

Audits of State and Local Governments

AGENCY: Department of Transportation.

ACTION: Final rule and request for comments.

SUMMARY: This final rule establishes a requirement for all recipients of Department of Transportation (DOT) assistance funds to comply with the requirements of the Single Audit Act of 1984, Pub. L. 98-502, and Office of Management and Budget (OMB) Circular A-128, Audits of State and Local Governments. The OMB Circular A-128 directs agencies to publish regulations implementing it. OMB Circular A-128 is included as an appendix to the basic regulation.

DATES: This rule is effective September 18, 1985. Comments must be received on or before October 18, 1985.

ADDRESS: Interested persons should submit comments to Docket Clerk, OST Docket No. 43344, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Charles E. Ventura, Department of Transportation, Office of Installations and Logistics—M-63, 400 Seventh Street, SW., Room 9100, Washington, D.C. 20590, (202) 426-4160.

SUPPLEMENTARY INFORMATION: Recipients of financial assistance from the Department of Transportation are currently required to obtain organization-wide audits in accordance with the requirements of Attachment P, Audit Requirements, to OMB Circular A-102, Uniform Requirements for Grants to State and Local Governments. This requirement is contained in program directives issued by the operating administrations in the Department that award assistance funds. OMB Circular A-128 was issued on April 12, 1985, supersedes Attachment P, and requires each Federal agency to issue regulations that include the provisions of the OMB Circular. The Department does, however, request comments on this rule. Most Federal assistance agencies will be issuing a rule similar to this one. Comments sent to any Federal agency will be shared with the others as appropriate.

Regulatory Process Matters

This regulation is classified as a "non-major" regulation under Executive Order 12291, and is nonsignificant under the Department of Transportation's Regulatory Policies and Procedures. It is certified under the criteria of the Regulatory Flexibility Act that this regulation would not have a significant economic impact on a substantial number of small entities. The economic impact of the rule is expected to be minimal. This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, et seq.).

In accordance with 5 U.S.C. 553, an opportunity for prior notice and public comment on this rule is not necessary, in that the rule simply makes applicable to recipients an already existing OMB Circular. OMB provided an opportunity for public comment in the Circular itself. DOT will, however, publish either a revision to this rule, if warranted, or a notice responding to comments that have been received during the comment period. Issued this 6th day of August, 1985, at Washington, D.C.

List of Subjects in 49 CFR Part 90

Audit requirements for state and local governments.

Elizabeth Hanford Dole,

Secretary of Transportation.

Subtitle A of Title 49 of the Code of Federal Regulations is amended by adding a new Part 90 to read as follows:

PART 90—AUDITS OF STATE AND LOCAL GOVERNMENTS

Sec.
90.1 Policy and scope.
90.3 Authority.
Appendix A—OMB Circular A-128, Audits of State and Local Governments.

Authority: Sec. 9(e)(2) of the Department of Transportation Act [49 U.S.C. 1657(e)(2)].

§ 90.1 Policy and scope.

The regulation in this part implements the Single Audit Act of 1984 (Pub. L. 98-502), 31 U.S.C. 75. All State and local government organizations that receive Federal assistance funds from the Department of Transportation, including funds received indirectly through other units of State and local governments, are required to meet the audit requirements of Appendix A (Office of Management and Budget Circular A-128, Audits of State and Local Governments). Specific guidance for individual assistance programs in the Department are contained in program guidance issued by the operating administrations in the Department that award Federal assistance funds.

§ 90.3 Authority.

This part is authorized by section 9(e)(2) of the Department of Transportation Act (49 U.S.C. 1657(e)(2)), which allows the Secretary to make such rules and regulations as may be necessary to carry out the Secretary's functions, powers, and duties.

BILLING CODE 4910-62-M

Appendix A—OMB Circular A-128, Audits of State and Local Governments

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A-128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98-502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A-102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A-102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the

generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions*, developed by the Comptroller General, dated Febuary 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98–502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expeditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with OMB Circular A–87, "Cost principles for State and local governments," and Attachment F of Circular A–102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a

central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A-87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,

—Withholding or disallowing overhead costs, and

—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395-3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,

Director.

Attachment—Circular A-128

Definition of Major Program as Provided in Pub. L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

[FR Doc. 85-19632 Filed 8-16-85; 8:45 am]

BILLING CODE 4910-62-T

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[No. 39777]

Negative Surcharge Tariffs; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules [Exemption].

SUMMARY: The Commission is adopting final rules (set forth in the appendix) permitting rail carriers unilaterally to publish rail allowance ("negative surcharge") tariffs to the extent such tariffs were authorized by section 10705a(a)(1)(A), which expired September 30, 1984. The Commission has found that continued regulation of rail allowances under provisions of 49 U.S.C. 10762(b)(2) that require concurrence or acceptance by other parties to the joint rate is not necessary to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power.

EFFECTIVE DATE: These rules will be effective on September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Proposed new rules in this proceeding were published at 49 FR 34534, August 31, 1984.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Environment And Energy

This decision will not significantly affect either the quality of the human environment or energy conservation.

Regulatory Flexibility

We reaffirm our certification in the proposed rulemaking notice that this action will not have a significant economic effect of a substantial number of small entities.

List of Subjects in 49 CFR Part 1039

Railroads.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10505, 10321, and 10762.

Decided July 29, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

Appendix

Title 49 CFR Part 1039, *Contracts and Exemptions,* is amended as follows:

1. The authority citations appearing at the end of §§ 1039.3, 1039.10, 1039.11, 1039.13, 1039.14, 1039.15, 1039.16, and 1039.17 are removed, and the authority citation for 49 CFR Part 1039 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10713, 10762, and 11105; 5 U.S.C. 553.

2. A new § 1039.18 is added to read as follows:

§ 1039.18 Allowance ("negative surcharge") tariff exemption.

Rail allowance ("negative surcharge") tariffs reducing the total charges applicable to a movement subject to a joint rate in which the carrier publishing the tariff participates, when the reduction is borne solely by that carrier, are exempt from the provisions of 49 U.S.C. 10762(b)(2) that require concurrence or acceptance by other parties to the joint rate.

[FR Doc. 85–19702 Filed 8–16–85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 50458–5048]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments and request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces the modification of subarea commercial troll and recreational chinook and coho quotas and a management subarea boundary north of Cape Falcon, Oregon. The Director, Northwest Region, NMFS (Regional Director) has determined, in consultation with the Pacific Fishery Management Council (Council), the Washington Department of Fisheries (WDF), and the Oregon Department of Fish and Wildlife, that the following actions are necessary to protect weak Washington, coho stocks, more closely to achieve overall coho and chinook salmon quotas, and to assure the equitable distribution of fishing opportunites for commercial and recreational fishermen north of Cape Falcon: (1) An exchange of chinook and coho between the commercial and recreational fishery quotas; (2) a reduction in the coho quota and an increase in the chinook quota for the commercial all-species fishery north of Carroll Island, which began August 3; and (3) a modification of the subarea management boundary, a reduction of the coho quota, and a shortening of the season for the commercial troll all-species fishery off the Columbia River beginning August 21.

DATES: Modification of a subarea management boundary and of subarea chinook and coho quotas for the recreational and commercial fisheries from Cape Falcon, Oregon, to the U.S.-Canada border is effective at 0001 hours Pacific Daylight Time (PDT), August 14, 1985, until modified, superseded, or rescinded. Comments will be accepted until August 29, 1985.

ADDRESSES: Comments on this notice may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115. The information upon which this notice is based is available for public inspection from 8:00 a.m. to 4:30 p.m. weekdays at the Northwest Regional Office, NMFS, Building 1, 7600 Sand Point Way, NE., Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206–526–6150.

SUPPLEMENTARY INFORMATION: Final regulations to implement the framework amendment to the fishery management plan for the commecial and recreational salmon fisheries off the coasts of Washington, Oregon, and California were published in the **Federal Register** on October 31, 1984 (49 FR 43679).

Under the provisions of the framework amendment, the 1985 management measures were published on May 2, 1985 (50 FR 18672). Regulations at §661.21(b) (5) and (6) provide authority for inseason modifications to certain management measures, including redistributing subarea quotas to achieve an overall quota and modifying boundaries to promote attainment of quotas.

The commercial fishery from Cape Alava to Leadbetter Point, Washington, opened on July 15, 1985, with subarea quotas of 16,100 chinook and 78,500 coho. The fishery was closed on July 18, 1985, when it was projected that the coho quota had been reached. Landings data through July 28, 1985, indicate that 136,300 coho were caught in the fishery, exceeding the subarea quota by 57,800 fish. Effort and catch rates were considerably higher than had been anticipated. However, only 11,300 chinook of the 16,100 chinook quota were caught in this fishery, leaving a surplus of approximately 4,800 chinook.

The recreational season from the U.S.-Canada border to the Queets River, Washington, opened on June 30, 1985, with quotas of 1,700 chinook and 28,400 coho. As of July 21, 1985, the fishery had harvested 1,008 chinook (59 percent of the quota) and only 3,017 coho (11 percent of the quota).

On July 24, 1985, the WDF closed the near-shore area from Cape Alava north to the Strait of Juna de Fuca in an effort to reduce the proportion of chinook being taken. Despite this, it appeared that further action was needed to prevent the recreational fishery from reaching its chinook quota and being closed before its coho quota was taken.

Council Recommendations

As a result of the surplus chinook in the commercial fishery and the unanticipated high catch of chinook by the recreational fishery, the Council met via telephone conference call on July 24, 1985, and again of July 31, 1985, to consider the need for inseason action

with respect to commercial and recreational fisheries north of Cape Falcon, Oregon. The following inseason actions were recommended by the Council.

1. Redistribution of Coho and Chinook Salmon Between the Recreational and Commercial Fisheries North of Cape Falcon, Oregon

Because the commercial fishermen had taken only 11,300 chinook of their 16,100 chinook quota in the fishery from Cape Alava to Leadbetter Point, and because they had substantially exceeded their 78,500 coho quota in the same fishery, an event which was expected to curtail subsequent all-species commercial fisheries, it is necessary to trade chinook for coho from the recreational fisheries in order to achieve the overall commercial quotas. It is also likely that the quota of 1,700 chinook in the recreational fishery from the Queets River to the U.S.-Canada border will be taken early and will result in an early closure in that area before the 28,400 coho quota can be taken. Representatives of the two user groups, therefore, have requested a trade of 750 chinook from the commercial quota for 3,000 coho from the recreational quota in order to increase the opportunity for them to achieve their overall quotas for both species.

After consideration of this proposal, the Council agreed that such an adjustment would not be detrimental to the salmon stocks involved and would be beneficial to both user groups. The Council recommended that the Regional Director make this exchange, consistent with the inseason action authority provided in the framework amendment and the 1985 management measures.

2. Reduction in the Coho Quota for the Commercial Fishery North of Carroll Island Beginning August 3, 1985

The Council reiterated its intent that the fisheries north of Cape Falcon be managed in 1985 to protect the Washington coho stocks of concern, i.e., the Skagit, Stillaguamish, Quillayute, Hoh, Queets, and Grays Harbor runs. Various options were considered that would curtail the two subsequent commercial fisheries, i.e., the fishery north of Carroll Island which was set to begin on August 3 with bare, blued hooks to concentrate on pink salmon with only incidental catches of chinook and coho, and the southern fishery (Leadbetter Point to Cape Falcon, Oregon) beginning August 21. This latter fishery would provide opportunity for commercial fishing primarily on Columbia River hatchery stocks. Council members stated their intention that any quota reduction for these two fisheries provide (1) no greater impacts on the weakest Washington coho runs than originally estimated when the 1985 seasons and quotas were set, and (2) equity between the commercial fishermen involved in the northern and southern fisheries.

During the July 31 telephone conference call, the Council recommended modification of the commercial season north of Carroll Island by prohibiting the retention of coho and limiting the catch of pink salmon to 200,000 rather than 250,000. These changes would substantially reduce the impact of the fishery on weaker coho stocks. By releasing all coho while catching 200,000 pink, only about 7,500 coho would be lost to hooking mortality, thus saving the 23,700 coho that would be taken if the original coho quota of 31,200 were maintained.

The Council also recommended that the bare, blued hooks, designed primarily for catching pink salmon in the special pink salmon fishery which began on August 3 should be made barbless. Present regulations do not allow inseason gear modifications; thus, if time permits, this restriction will be imposed by a separate emergency regulation.

The Council also recommended that, even though the 5,100 chinook impact allowance for the pink salmon fishery which began of August 3, 1985 (960 harvest quota and 4,140 hooking mortality) appeared adequate, the remaining 4,050 chinook not taken in the earlier fishery between Cape Alava and Leadbetter Point (16,100 chinook quota minus harvest of 11,300 chinook, minus trade of 750 chinook to the recreational fishery, leaving a balance of 4,050 chinook) should be transferred to this fishery, adding 760 to the harvest quota and 3,290 to the hooking mortality allowance. The result is an upward adjustment in the total chinook impact allowance for this fishery to 9,150 fish, including a harvest quota of 1,720 chinook and a hooking mortality allowance of 7,430 chinook.

3. Reduction in the Coho Quota and Movement of the Northern Subarea Management Boundary for the All-Species Commercial Season Off the Columbia River Beginning August 21, 1985

To further offset the overage in the number of coho harvested in the July commercial fishery and still provide some fishing opportunity for the non-mobile small boat commercial fishermen in the Columbia River area, the Council recommended that the coho quota for this fishery be reduced from 32,000 fish to 10,000 fish. This adjustment would further offset the earlier overharvest of coho by an additional 22,000 coho. The chinook quota of 2,700 fish appeared more than adequate for this reduced coho quota, so the Council recommended no action with respect to the chinook quota.

To further reduce the impacts on the weakest Washington coho runs, the Council recommended moving the northern boundary of this fishery from Leadbetter Point, Washington, to the Red Buoy Line south of the Columbia River mouth. This line extends seaward along the south jetty of the Columbia River to the visible tip of the jetty, then to Buoy #2SJ, then southwesterly to Buoy #4, continuing southwesterly to Buoy #2, then to the Lightship Buoy, and then due west along 46°11′ N. latitude.

The reason for moving this management boundary south is to further reduce the impacts of the commercial fishery on the weak Washington coho runs. The further south the fishery occurs, the smaller the percentage of critical Washington coho stocks which are caught.

Secretarial Action

The Secretary concurs with the above recommendations of the Council and by this notice sets forth the following inseason modifications to the management measures for the commercial and recreational fisheries north of Cape Falcon, Oregon. For the reasons discussed above, the following changes are made to the notice of 1985 management measures (50 FR 18672, May 2, 1985):

TABLE 1.—REVISED SUBAREA QUOTAS AND SUBAREA MANAGEMENT BOUNDARY [1] (1985)

Area and season	Chinook quota	Coho quota
Commercial Fishery		
U.S.-Canada border to Carroll Island, Aug. 3 through earlier of Aug. 31 or coho impact limitation	[2] 1,720	[3] 0
Red Buoy line [4] to Cape Falcon, 0001 hours to 2400 hours PDT Aug. 21 [5]	2,700	[6] 10,000
Recreational Fishery		
U.S.-Canada border to Queets River, June 30 through earlier of Sept. 19 or quotas. Sunday through Thursday only	2,450	25,400

[1] The States of Oregon and Washington have taken action to implement the Council's recommendations in State waters. Fishermen will have 24 hours after the season closes to land fish in Oregon ports and 48 hours to land fish in Washington ports.

[2] The 1,720 chinook listed here is a harvest quota. A hooking mortality allowance of 7,430 chinook also is established for this fishery.

[3] Retention of coho salmon is prohibited. A hooking mortality limit of 7,500 coho is established.

[4] This line extends seaward along the south jetty of the Columbia River to the visible tip of the jetty and then to Buoy #2SJ, then southwesterly to Buoy #4, continuing southwesterly to Buoy #2, then to the Lightship Buoy, then due west along 46°11′6″ N. latitude.

[5] Because of the anticipated large number of fishermen who may participate in this fishery, it is projected that the 10,000 coho quota may be taken in one day. After opening, it would not be possible to close the fishery in Federal waters in so short a time. Therefore, this notice not only makes adjustments in the coho quota and the northern management boundary but also closes the fishery after one day of fishing. The fishery will open at 0001 hours PDT on August 21, 1985, and will close at 2400 hours PDT on the same date. If a quota is not met, the fishery may be reopened in accordance with § 661.21(a)(2) to allow the remainder of the quota to be taken so long as at least 24 hours is needed to harvest the remainder of the quota.

[6] Conservation zone 1 is eliminated.

Classification

Because time does not permit a comment period prior to the date these management measures must be in effect, comments will be accepted until August 29, 1985.

The public had opportunity to comment on these inseason management changes during their development in the two conference call Council meetings which were open to the public.

As provided under § 661.23(e), all information relevant to this notice has been compiled in aggregate form and is available for public review at the above address.

This action is taken under the authority of 50 CFR Part 661 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

Dated: August 14, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-19777 Filed 8-14-85; 4:59 pm]

BILLING CODE 3510-22-M

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50 CFR Part 674

[Docket No. 50694-5094]

High Seas Salmon Fishery Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice closing for 10 days the fishery conservation zone (FCZ) off southeastern Alaska to commercial fishing for all salmon species. This action is necessary to allow coho salmon to escape the ocean fishery so they can move into the bays and inlets where the harvests can be managed more closely on a stock-by-stock basis. It complements similar actions taken by the State of Alaska for the commercial salmon fisheries in its waters. The intent of this action is to achieve better control over the numbers of each stock that (a) are harvested and (b) reach the spawning grounds.

DATE: This notice is effective at 0001 hours Alaska Daylight Time (ADT), August 15, 1985, and will expire at midnight (2400 hours) on August 24, 1985. Public comments on this notice are invited until September 16, 1985.

ADDRESS: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 30-day comment period, the data upon which this notice is based will be available for public inspection during business hours (0800 to 1630 ADT Monday through Friday) at the NMFS Alaska Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS) 907-586-7229.

SUPPLEMENTARY INFORMATION: Salmon fishing in the FCZ off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175° East Longitude (FMP). This FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR Part 674.

The Alaska Board of Fisheries, under 5 AAC 33.365(b)(3), requires that the commercial salmon troll fisheries in Alaskan waters be closed "for approximately 10 days" unless "the coho salmon runs are larger than the last 10-year average and . . . acceptable number of coho salmon are moving into the in-shore salmon fishing areas."

As of August 8, 1985, the estimated coho harvest by commercial salmon trollers was 1.1 million coho (approximately three times the 1971-1980 average catch to the same date) whereas the harvest by the gillnet fisheries, which operate mostly in the territorial waters of Alaska, is about twice the average. The sport catches, also primarily from territorial waters, are a bit below average. Most of the troll catch has been made in the outer coastal areas of Alaskan waters and in the FCZ.

Although there is some evidence that the abundance of coho is greater than the average of the last 10 years, the evidence varies from area to area. Further, the high coho harvests being made by the troll fleet in the ocean have prevented an acceptable number of coho from moving into the inshore salmon fishing and spawn areas. Thus, on August 8, 1985, the Alaska Department of Fish and Game announced that it was closing the salmon troll fishery in Alaskan waters for 10 days, effective 12:01 a.m., August 15, 1985.

Regulations implementing the FMP, at § 674.23(a), provide that the Secretary of Commerce (Secretary) may modify the time and area limitations governing the fishery whenever he determines that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

(a) The effect of overall fishing effort within any part of the management area;

(b) Catch per unit of effort and rate of harvest;

(c) Relative abundance of salmon stocks within the management area;

(d) Condition of salmon stocks throughout their ranges; and

(e) Any other factors relevant to the conservation of salmon.

Having reviewed evidence of the high offshore harvest, the Secretary has determined that the effect of overall fishing effort in the FCZ, the high catch per unit of effort and rate of harvest there, and the apparent high relative abundance of coho stocks within the FCZ portion of the management area indicate that the condition of coho stocks is substantially different from the condition anticipated in the FMP. He has also found that this difference reasonably requires a modification of time or area limitations if coho stocks are to be adequately conserved and managed. Therefore, he is implementing the 10-day closure prescribed by this action.

The closure will become effective after this notice has been filed for public inspection with the Office of Federal Register and the closure has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that the coho salmon stocks harvested in southeastern Alaska will be subject to harm unless this notice takes effect promptly. He finds, therefore, that it would be impracticable and contrary to

the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553 (b) and (c).

This action is authorized by 50 CFR Part 674 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: August 14, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-19778 Filed 8-14-85; 4:59 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol 50, No. 160
Monday, August 19, 1985

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 307, 318, and 381

[Docket No. 83-020P]

Expansion of Operating Schedules for Total Quality Control Establishments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the Federal meat and poultry products inspection regulations (9 CFR 301.1 *et seq.* and 381.1 *et seq.*) to permit meat and poultry establishments under a USDA approved Total Quality Control (TQC) system to expand their approved operating schedule to up to 12 hours. TQC establishments are currently approved for an 8-hour operating schedule which prohibits the shipping of product that is produced after that 8-hour period. Establishments must either retain product produced after the 8-hour schedule in storage until the following day when the inspector is on duty or request that overtime inspection services be provided and reimburse the Department for those additional services. This proposal would allow establishments that have satisfactorily operated under an approved TQC system for one year to expand their approved operating schedule, under certain terms and conditions and in accordance with appropriate monitoring by inspectors as deemed necessary.

DATE: Comments must be received on or before November 14, 1985.

ADDRESS: Written comments should be sent in duplicate to the Policy Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 3803, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250. Oral comments as provided for under the Poultry Products Inspection Act should be directed to Mr. Bill F. Dennis, (202) 447-3840. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has made an initial determination that this proposal is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices to 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 exterprises to compete with foreign-base enterprises in domestic or export markets.

This proposal would allow, under certain conditions, TQC establishments to expand their operating schedule to up to 12 hours. At this time, there are approximately 400 USDA approved TQC establishments. This proposal would be applicable to TQC establishments that have satisfactorily operated under a TQC system for one year.

The Department will also consider other points of view concerning the proposal which limits the expansion of operating schedules to TQC establishments. Comments submitted regarding this aspect of the proposal should include data and other information to support an alternative position.

Effect on Small Entities

The Administrator, FSIS, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601).

At present, there are over 400 establishments operating under a USDA approved TQC system. These establishments range from one-person operations to those operated by some of the Nation's largest processors.

TQC establishments are presently prohibited from shipping product produced after their approved 8-hour operating schedules. They must either retain such product in storage until the following day or request overtime services.

The proposal would allow TQC establishments, under certain conditions, to expand their operating schedules to up to 12 hours a day. This would be particularly beneficial for small TQC establishments that may not have the space available to store the product produced after the 8-hour operating schedule and, therefore, have no option but to pay for overtime services.

The proposal would not have a significant impact on TQC establishments, whether large or small. It would offer an alternative schedule for all TQC establishments on a voluntary basis. Although TQC establishments would be required to submit a plan to the Department for implementing certain provisions required of TQC establishments operating under expanded schedules, this paperwork burden would be a one-time exercise. Otherwise, the proposed rule would provide a positive impact upon TQC establishments qualifying for the expanded operating schedule.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments must be sent in duplicate to the Policy Office and must bear reference to the docket number located in the heading of this document. Any person desiring an opportunity for an oral presentation of views as provided for under the Poultry Products Inspection Act should make such request to Mr. Dennis so that arrangements can be made for such views to be presented. All comments submitted pursuant to this proposal will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

On August 15, 1980, the Department published a final rule in the **Federal Register** (45 FR 54310) that, in part, permits an official establishment to be eligible for a program of inspection that places more responsibility on the establishment to control its own production through a quality control program. Under that rule, an

establishment can submit a proposed Total Quality Control (TQC) System to the Administrator for approval. If the Administrator finds the proposed system adequate to assure the preparation of meat and poultry products in accordance with the Federal Meat Inspection Act and/or the Poultry Products Inspection Act, the establishment can participate in TQC inspection. At this time, there are over 400 establishments approved to operate under a TQC system.

A TQC system identifies the critical control points in a plant's production process where compliance with FSIS regulations could be affected. This system specifies how the critical control points will be checked by plant management and what actions will be taken by the plant to verify compliance. The establishment is required to keep records showing the results of checking the critical points. An approved TQC system is an agreement between the processor and the Department which identifies how that establishment will control its production process to insure that all products are produced in accordance with the applicable regulations.

The Department verifies that the TQC system is operating in accordance with the approved plan through the review and evaluation of the records kept by the establishment. In addition, verification samples are taken to insure products are in compliance. If an establishment fails to comply with the provisions outlined in the approved TQC plan or if its products are found to be adulterated or misbranded, the TQC plan will be terminated and the establishment will be inspected under traditional methods.

Establishments under an approved TQC system can produce and ship product any time during their approved 8-hour operating schedule. The Department provides inspection services, without charge, up to 8 consecutive hours per shift during their approved operating schedule. A TQC establishment may continue to produce product beyond its operating schedule but may not ship that product until the start of its inspector's next tour of duty at which time the product is subject to inspection. Although an establishment can hold such product produced until the inspector resumes duty and has an opportunity to inspect the product, some establishments do not have adequate storage facilities to hold product. Overtime inspection is authorized when the TQC plant requests to ship product after 8 hours of inspection service without holding it for the next regular scheduled shift of the inspector.

The Department has determined the need to address the manner of inspection for a TQC establishment desiring to produce and ship product after its approved operating schedule. The basic philosophy underlying the TQC system at federally inspected establishments is that the Department is responsible for monitoring the TQC system and determining that the products prepared at the establishment are not adulterated and are otherwise in compliance with the Federal meat and poultry products inspection Acts (FMIA and PPIA) before they are passed and distributed from the establishment. This activity does not require the continued presence of the inspector at the establishments in all instances. Those establishments with an approved TQC system continue to operate under their TQC system and under Federal inspection regardless of the inspector's presence or absence. Thus, it appears to be unjustifiably burdensome to have separate requirements in all instances for shipping product after the establishment's 8-hour operating schedule. After evaluating this matter, the Department is proposing that eligible TQC establishments be permitted to expand their approved operating schedule to up to 12 consecutive hours per shift.

The Department would inspect TQC establishments approved for a 12-hour operating schedule by a variety of methods. If an establishment requests to change its operating schedule to up to 12 hours, the Department would verify that the establishment is operating according to its TQC plan after 8 hours of inspection service. Overtime inspection would be authorized for this purpose. The amount of overtime an establishment would incur would be determined by the circuit supervisor and depend upon the nature of the operation and the volume of product being shipped during its expanded hours.

Another provision of the proposal is that establishments would be required to provide a plan for random sampling of products shipped after 8 hours of operation and a plan for holding of the samples until the inspector's next scheduled tour of duty. These verification samples would be utilized to further assure the establishment is operating according to its TQC plan and preparing products in compliance with the FMIA and PPIA.

Under the proposal, immediate containers of products would be required to be coded to indicate when products are produced during the production shift. This would allow the Department to ascertain when any noncompliant product was produced.

In addition to these provisions, the Department would determine the level and intensity of inspection coverage for those establishments approved for expanding their operating schedules.

Establishments operating to up to 12 hours would be required to comply with all provisions of this proposal. Those found not to be in compliance would be subject to, at the minimum, the termination provisions found in 9 CFR 318.4(g) and 381.145(g).

The Proposal

Establishments that have satisfactorily operated under a USDA approved TQC system for at least one year may request to expand their operating schedules to up to 12 consecutive hours per shift under certain conditions. Applications for approval would be submitted to the Regional Director. Approval would be granted if it is determined that:

1. The TQC system has satisfactorily operated for at least one year.

Prior to allowing an establishment to expand its approved operating schedule, the Department would require a period of time to evaluate how well the system is functioning. This evaluation would be based on the establishment's quality control records, verification samples, the inspector's log book, and any other available information.

2. The production process after 8 hours of inspection is only a continuation of the process monitored by the inspector and in operation during the last hour of inspection.

The Department must be able to assure products shipped during expanded hours of operation are safe and wholesome and otherwise not adulterated. For this reason, establishments which have expanded their operating schedules would not be allowed to begin a new process after 8 hours of inspection service. During the last hour of inspection service, the ongoing production process may be continued and the resulting product may be shipped any time within the approved operating schedule. This would allow the inspector an opportunity to inspect the raw ingredients and the process for those products being shipped after 8 hours of inspection.

3. The establishment has made provisions for identifying when products were produced during a production shift.

In order to assure that products are in compliance, the Department must be able to determine when the products

were produced during a production shift. Therefore, establishments would be required to code or mark immediate containers of products to indicate a specified period of production.

4. Establishments would be required to submit a sampling plan.

Establishments would be required to provide a sampling plan for products shipped after 8 hours of inspection and provide a means for security of those samples until the inspector's next tour of duty. This would provide the Department the opportunity to further assure, through examination of the samples, that the product was produced in compliance with the approved TQC system and the FMIA and PPIA.

5. Establishments would be subject to overtime inspection services.

Under the provisions outlined above, the inspector would be authorized overtime to verify the TQC system is functioning according to the approved plan and assure that products prepared at the establishment are in compliance with the FMIA and PPIA. This overtime would be charged to the participating TQC establishment. The amount of overtime services would be determined by the circuit supervisor.

List of Subjects

9 CFR Part 307

Meat inspection, Quality control, Facilities, Overtime.

9 CFR Part 318.

Meat inspection, Quality control, Reporting and recordkeeping requirements, Preparation of products.

9 CFR Part 381.

Poultry products inspection, Quality control, Reporting and recordkeeping requirements.

The Federal meat and poultry products inspection regulations would be revised as follows:

PART 307—[AMENDED]

1. The authority citation for Part 307 would be revised to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 307.4(c) of the Federal meat inspection regulations (9 CFR 307.4(c)) would be amended by adding a new sentence at the end thereof to read as follows:

§ 307.4 Schedule of operations.

* * * * *

(c) * * *. These provisions are applicable to all official establishments except in certain cases as provided in § 318.4(h) of this subchapter.

* * * * *

PART 318—[AMENDED]

3. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

4. Section 318.4 of the Federal meat inspection regulations (9 CFR 318.4) would be amended by adding a new paragraph (h) to read as follows:

§ 318.4 Preparation of products to be officially supervised; responsibilities of official establishment; plant operated quality control.

* * * * *

(h)(1) *Operating Schedule Under Total Plant Quality Control.* An official establishment with an approved total plant quality control system may request approval for an operating schedule of up to 12 consecutive hours per shift. Permission will be granted provided that:

(i) The official establishment has satisfactorily operated under a total plant quality control system for at least one year.

(ii) All products prepared and packaged, or processed after the end of 8 hours of inspection shall only be a continuation of the processing monitored by the inspector and being conducted during the last hour of inspection.

(iii) All immediate containers of products prepared and packaged shall bear code marks that are unique to any period of production beyond the 8 hours of inspection. The form of such code marks will remain constant from day to day, and a facsimile of the code marks and their meaning shall be provided to the inspector.

(iv) The official establishment provides an acceptable plan for random sampling of products shipped after 8 hours of inspection and a means of securing such samples until the inspector's next plant visit.

(2) *Application.* Applications shall be submitted to the Regional Director, and shall specify how the conditions in § 318.4(h)(1) have been met.

(3) *Monitoring by Inspectors.* In order to verify that a plant is preparing and shipping product in accordance with the approved total plant quality control system and the Act and regulations after the 8 hours of inspection, the official establishment may be provided overtime inspection services at the discretion of the circuit supervisor and charged for such services.

PART 381—[AMENDED]

5. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

6. Section 381.37(c) of the poultry production inspection regulations (9 CFR 381.37(c)) would be amended by adding a new sentence at the end thereof to read as follows:

§ 381.37 Schedule of operations.

* * * * *

(c) * * *. These provisions are applicable to all official establishments except in certain cases as provided in § 381.145(h) of this subchapter.

* * * * *

7. Section 381.145 of the Federal poultry products inspection regulations (9 CFR 381.145) would be amended by redesignating the present paragraph (h) as (i) and adding a new paragraph (h) to read as follows:

§ 381.145 Poultry products and other articles entering or at official establishments; examination and other requirements.

* * * * *

(h)(1) *Operating Schedule Under Total Plant Quality Control.* An official establishment with an approved total plant quality control program may request approval for an operating schedule of up to 12 consecutive hours per shift. Permission will be granted provided that:

(i) The official establishment has satisfactorily operated under a total plant quality control system for at least one year.

(ii) All products prepared and packaged, or processed after the end of 8 hours of inspection shall only be a continuation of the processing monitored by the inspector and being conducted during the last hour of inspection.

(iii) All immediate containers of products prepared and packaged shall bear code marks that are unique to any period of production beyond the 8 hours of inspection. The form of such code marks will remain constant from day to day, and a facsimile of the code marks and their meaning shall be provided to the inspector.

(iv) The official establishment provides an acceptable plan for random sampling of products shipped after 8 hours of inspection and a means of

securing such products until the inspector's next plant visit.

(2) *Application.* Applications shall be submitted to the Regional Director and shall specify how the conditions in § 381.145[h](1) have been met.

(3) *Monitoring by Inspectors.* In order to verify that a plant is preparing and shipping product in accordance with the approved total plant quality control system and the Act and regulations after the 8 hours of inspection, the official establishment may be provided overtime inspection services at the discretion of the circuit supervisor and charged for such services.

Done at Washington, D.C., on: August 14, 1985.

L.L. Gast,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 85-19754 Filed 8-16-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 75

[Airspace Docket No. 84-AWP-3]

Proposed Alteration of VOR Federal Airways, Jet Routes and Tucson, AZ, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Federal Airways V-16, V-66, V-105, V-393, V-395, V-202 and Jet Routes J-11 and J-92. These actions result from the relocation of the Tucson Very High Frequency Omni-Directional Range and Tactical Air Navigation Facility (VORTAC) approximately 2½ nautical miles west southwest of its present location. Associated actions proposed in this docket include amended descriptions of the Tucson, AZ, Control Zone and Transition Area, and certain other related airspace actions.

DATES: Comments must be received on or before September 12, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWP-3, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participated in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AWP-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.123, § 71.171, § 71.181 and § 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to implement the following airspace actions associated with relocation of the Tucson VORTAC approximately 2½ miles west southwest of its present position: (1) Alter VOR Federal Airways V-16, V-66, V-105, V-202, V-393, V-395; (2) standardize the width of V-393 between the relocated Tucson VORTAC and Nogales VORTAC as a result of the Tucson relocation; (3) reduce the airway width of V-66 on the south side of the airway between the relocated Tucson VORTAC and Douglas VORTAC to prevent airway penetration of Restricted Area R-2303B; (4) replace alternate airway V-16S between Cochise and Tucson VORTACs with V-202. This action is consistent with the agency's overall effort to replace or delete alternate airways; (5) amend the Tucson International Airport, AZ, Control Zone; (6) amend Tucson, AZ, Transition Area; and (7) alter Jet Routes J-11 and J-92. Sections 71.123, 71.171, 71.181 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA had determined that this proposed 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 ad 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 routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

VOR Federal airways, Control zones, Transition areas, and Jet routes.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

1. The authority citation of Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V-16—[Amended]

By removing the words "including a S alternate via INT Tucson 122° and Cochise 257° radials;"

V-66—[Amended]

After the words "Tuscon, AZ;" add the words "3 miles south and 4 miles north of centerline between Tucson and Douglas"

V-105—[Amended]

After the word "Tucson" remove "298°" and subsitute "308 °T(286 °M)"

V-393—[Amended]

By removing the words ", (3 miles east and 4 miles west of centerline)"

V-395—[Amended]

After the words "INT Tucson" remove "198°" and substitute "188 °T (176 °M)"

V-202—[Amended]

By removing the words "From Cochise, AZ, via" and substituting the words "From Tucson, AZ, via INT Tucson 119 °T(107 °M) and Cochise, AZ, 258 °T(245 °M) radials. Cochise;"

3. Section 71.171 is amended as follows:

Tucson International Airport, AZ—[Amended]

By removing the words "within 3 miles each side of the Tucson VORTAC 273° radial extending from the 5-mile radius zone to 15 miles west of the VORTAC;" and substituting the words "within 3 miles each side of the 273 °T(260 °M) bearing from lat. 32°07'21" N., long. 110°49'12" W.; extending from the 5-mile radius zone to 15 miles west of lat. 32°07'21" N., long. 110°49'12" W."

4. Section 71.181 is amended as follows:

Tucson, AZ—[Amended]

By removing the words "within 16 miles NE and 13 miles SW of the Tucson VORTAC 138° radial extending from the 10-mile radius area to 16 miles SE of the VORTAC, within 1 mile NE and 9 miles SW of the Tucson VORTAC 318° radial, extending from the 10-mile radius area to 22 miles NW of the VORTAC and within 16 miles NE of the Tucson VORTAC 318° radial extending from the Tucson VORTAC to 30 miles NW of the VORTAC" and substituting the words "within 16 miles NE and 13 miles SW of the 138 °T(123 °M) bearing from lat. 32°07'21" N., long. 110°49'12" W.; extending from the 10 mile radius area to 16 miles SE of lat. 32°07'21" N., long. 110°49'12" W.; within 1 mile NE and 9 miles SW of a 318 °T(305 °M) bearing from lat. 32°07'21" N., long. 110°49'12" W.; extending from the 10-mile radius area to 22 miles NW of lat. 32°07'21" N., long. 110°49'12" W.; and within 16 miles NE of the 318 °T(305 °M) bearing from lat. 32°07'21" N., long. 110°49'12" W.; extending from lat. 32°07'21" W., long. 110°49'12" W.; to 30 miles NW of lat. 32°07'21" W., long. 110°49'12" W.,"

6. The authority citation for Part 75 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.

7. Section 75.100 is amended as follows:

J-11—[Amended]

By removing the words "via INT Tucson 316°" and substituting the words "via INT Tucson 320 °T(308 °M)"

J-92—[Amended]

By removing the words "INT of Casa Grande 145° and Tucson, AZ, 298° radials; Tucson, to the INT of the Tucson 185° radials and the United States/Mexican Border." and substituting the words "INT of Casa Grande 145 °T(131 °M) and Tucson, AZ, 300 °T(280 °M) radials; Tucson; to INT of Tucson 179 °T(167 °M) radials and the United States/Mexican Border."

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

John Watterson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-19666 Filed 8-16-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-15]

Proposed Alteration of VOR Federal Airways V-269 and V-357; Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Federal Airways V-269 and V-357 by deleting reference to the airway not being in effect when the Juniper Military Operations Area (MOA) is activated. A recent change to the lateral boundaries of the Juniper MOA resulted in removing the airspace conflict within these airways. This amendment will allow better utilization of the navigable airspace and simplify flight planning.

DATES: Comments must be received on or before September 12, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain region, Attention: Manager, Air Traffic division, Docket No. 85-ANM-15, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ANM-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation regulations (14 CFR Part 71) to amend VOR Federal Airways V–269 and V–357 by deleting reference to the airway not being in effect from 42 miles northwest of Wildhorse VOR to 41 miles southeast of Redmond VORTAC 11,000 feet MSL and above and from 32 miles southwest of the Wildhorse VOR to 13 miles northeast of Lakeview VORTAC. A recent change to the lateral boundaries of the Juniper MOA resulted in removing the airspace conflict with V–269 and a portion of V–357. This will allow better utilization of navigable airspace and aid in flight planning. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed 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, when promulgated, will not have a significnt 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

VOR Federal Airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed 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; E.O. 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.23 is amended as follows:

V–269—[Amended]

By removing the words "That portion of the airway 11,000 feet MSL and above from 42 miles northwest of Wildhorse VOR to 41 miles southeast of Redmond VORTAC is suspended during the time that the Juniper MOA is activated by NOTAM."

V–357—[Amended]

By removing the words "from 32 miles southwest of Wildhorse VOR" and substituting the words "from 26 miles southwest of Wildhorse VOR."

Issued in Washington, D.C., on July 9, 1985.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–19667 Filed 8–16–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–AWA–2]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This action corrects the address for the informal airspace meeting scheduled for the Portland, OR, Airport Radar Service Area.

DATES: Comments must be received on or before November 1, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 85–AWA–2, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this Correction to NPRM must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AWA–2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this Correction to NPRM may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Correction to Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this Correction. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

Correction to the Proposal

This action corrects the address for the Portland, OR, informal airspace

meeting from Portland, OR, to Vancouver, WA.

The FAA has determined that this proposed 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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas, Aviation safety.

Correction to the Proposed Amendment

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 85–18032, as published in the **Federal Register** on August 2, 1985, (50 FR 31472) is corrected 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.

2. By changing the Portland, OR, ARSA informal airspace meeting to read:

Portland International Airport, OR. ARSA
Date: September 9, 1985
Time: 6:30 p.m.
Location: Clark County College, 1800 E. McLaughlin Boulevard, Vancouver, WA.

Issued in Washington, D.C., on August 13, 1985.

James Burns, Jr.,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85–19671 Filed 8–16–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–AWA–24]

Proposed Alteration of Brunswick, ME, Control Area, Maine Transition Area and Establishment of Machias, ME, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Brunswick, ME, Transition, Control Area and the Maine Transition Area and establish the Machias, ME, Transition Area due to the establishment of a new instrument approach at the Machias Valley Airport, ME.

DATES: Comments must be received on or before September 12, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, New England Region, Attention: Manager, Air Traffic Division, Docket No. 85–AWA–24, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AWA–24." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering amendments to § 71.163 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Brunswick, ME, Control Area and the Maine Transition Area and establish the Machias, ME, Transition Area. An instrument approach is being established for the Machias Valley Airport, ME, which will require establishment of a 700-foot transition area. Since the airspace will extend beyond the current Maine Transition Area and extend into the present Brunswick, ME, Control Area, it is necessary to amend the above mentioned boundaries. Sections 71.63 and 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed 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, when promulgated, will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Additional control areas and transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation of Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10654; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. § 71.163 is amended as follows:

Brunswick, ME—[Revised]

In the title remove "Brunswick, ME" and substitute "Brunswick"

That airspace extending upward from 2,000 feet MSL west of long. 69°30'00" W., and from 5,500 feet MSL east of long. 69°30'00" W., beginning at lat. 42°43'15" N., long. 70°25'00" W.; to lat. 43°18'15" N., long. 70°25'00" W.; to lat. 43°30'00" N., long. 70°06'00" W.; to lat. 43°41'00" N., long. 69°30'00" W.; to lat. 43°44'00" N., long. 69°19'42" W.; to lat. 43°48'00" N., long. 69°03'00" W.; to lat. 43°52'00" N., long. 69°00'00" W.; to lat. 44°18'30" N., long. 67°56'00" W.; to lat. 44°20'10" N., long. 67°56'00" W.; extend by a line 3 nautical miles from and parallel to the U.S. shoreline to lat. 44°25'30" N., long. 67°30'00" W.; to lat. 44°23'00" N., long. 67°30'00" W.; to lat. 44°30'00" N., to long. 67°12'00" W.; to lat. 44°34'05" N., long. 67°13'08" W.; then via a line 3 nautical miles from and parallel to the U.S. shoreline to lat. 44°47'45" N., long. 66°53'00" W.; then southerly via the Moncton Flight Information Region boundary to the north boundary of Control 1141; then westerly via the north boundary of Control 1141 to point of beginning.

3. § 71.181 is amended as follows:

Maine, ME—[Amended]

In the title by removing "Maine, ME" and substituting "Maine" and by removing the words "extend by a line 3 nautical miles from and parallel to the U.S. shoreline to lat. 44°20'10" N." and substituting the words "extend by a line 3 nautical miles from and parallel to the U.S. shoreline to lat. 44°34'05" N., long. 67°13'08" W.; to lat. 44°30'00" N., long. 67°12'00" W.; to lat. 44°23'00" N.; long. 67°30'00" W.; to lat. 44°25'30" N., long. 67°30'00" W.; extend by a line 3 nautical miles from and parallel to the U.S. shoreline to lat. 44°20'10" N.

Machias, ME—[New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Machias Valley Airport (lat. 44°42'01" N., long. 67°28'51" W.); and within 3 statute miles each side of the Machias NDB (lat. 44°42'11" N., long. 67°28'12" W.); 177°T(196°M) bearing extending from the 5-mile radius to 8.5 miles southeast.

Issued in Washington, DC, on July 8, 1985.

John Watterson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-19668 Filed 8-16-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AWA-27]

Proposed Alteration of VOR Federal Airways, Kinston, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of VOR Federal Airways V-1 and V-70 located in the vicinity of Kinston, NC. This action is consistent with our agreement with the International Civil Aviation Organization (ICAO) to eliminate alternate route designations within the United States.

DATES: Comments must be received on or before September 12, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-27, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to

acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-1 by renumbering V-1E between Kinston, NC, and Cofield, NC. This action would extend VOR Federal Airway V-70 from Kinston to Cofield via the current alignment of V-1E. This action is consistent with our agreement to eliminate all alternate route designations from the National Airspace System. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed 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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal Airways, Aviation safety.

The proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation of 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.

2. § 71.123 is amended as follows:

V-1—[Amended]

By removing the words "including an east alternate segment from Kinston to Cofield via the intersection of Kinston 050° and Cofield 186° radials,"

V-70—[Amended]

By removing the words "to Kinston, NC." and substituting the words "Kinston, NC; INT Kinston, 050°T(055°M) and Cofield, NC, 186°T(192°M) radials; to Cofield."

Issued in Washington, DC, on July 8, 1985.

John Watterson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-19669 Filed 8-16-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 85-ANM-26]

Proposed Establishment of Restricted Area R-6714E; Yakima, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a new Restricted Area R-6714E directly above existing Restricted Areas R-6714A, B, C and D. The floor of which will be 29,000 feet MSL extending vertically to and including 55,000 feet MSL. These proposals would provide the necessary airspace for the testing of high altitude weapons. This airspace is expected to be used approximately 25 days per year.

DATES: Comments must be received on or before September 12, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 85-ANM-26, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Andy Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-3128.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ANM-26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with

FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.151 and § 73.67 of Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish new Restricted Area R–6714E, Yakima, WA. R–6714E will also be added to the Continental Control Area. The Department of Army has requested an increase in airspace to and including 55,000 feet MSL to accommodate high altitude weapons testing. The ceiling of the existing Restricted Areas R–6714A, B, C and D is 29,000 feet MSL. In order to achieve maximum firing capability for the testing of the high altitude weapons, it will be necessary to restrict airspace to and including 55,000 feet MSL. Sections 71.151 and 73.67 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed 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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Continental Control Area and Restricted Areas, Aviation safety.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) 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.

2. § 71.151 is amended as follows:

R–6714E Yakima, WA—[New]

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

4. § 73.67 is amended as follows:

R–6714E Yakima, WA—[New]

Boundaries. Beginning at lat. 46° 51' 00" N., long. 119° 58' 00" W.; along the west shore of the Columbia River to lat. 46° 38' 30" N., long. 119° 55' 30" W.; to lat. 46° 33' 00" N., long. 119° 55' 30" W.; to lat. 46° 33' 00" N., long. 120° 09' 00" W.; to lat. 46° 37' 00" N., long. 120° 20' 00" W.; to lat. 46° 40' 35" N., long. 120° 26' 35" W.; to lat. 46° 43' 00" N., long. 120° 26' 38" W.; to lat. 46° 51' 00" N., long. 120° 21' 30" W.; to lat. 46° 51' 00" N., long. 120° 16' 30" W.; to lat. 46° 54' 35" N., long. 120° 14' 57" W.; clockwise along the arc of a 12-mile radius circle centered at lat. 46° 44' 45" N., long. 120° 20' 00" W.; to lat. 46° 51' 13" N., long. 120° 08' 05" W.; to the point of beginning.

Designated altitudes. 29,000 feet MSL to and including 55,000 feet MSL.

Time of designation. Intermittent by NOTAM.

Controlling agency. FAA, Seattle ARTCC.

Using agency. U.S. Army, Commanding General, Fort Lewis, WA.

Issued in Washington, D.C., on July 9, 1985.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–19670 Filed 8–16–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 290

[Docket No. RM85–17 (Phase II)]

Regulation of Electricity Sales-for-Resale and Transmission Service

Issued: August 12, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice extending comment period and rescheduling conference.

SUMMARY: On June 28, 1985, the Commission issued a notice of inquiry in Phase II of this proceeding to explore how the Commission's regulation of requirements service affects efficiency in electricity markets and how it might be changed to encourage greater efficiency. (50 FR 27604, July 5, 1985). This notice changes the date for filing comments, the date of the public conference and the date for filing requests to participate in the conference.

DATES: Comments are due on or before October 4, 1985. Requests to participate in the public conference are also due on or before October 4, 1985, and must be filed separately from comments. The public conference will be held on November 13 and 14, 1985, at 10:00 a.m.

ADDRESSES: The public conference will be held in Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426. Comments and requests to participate should be filed with the Office of the Secretary at the same street address.

FOR FURTHER INFORMATION CONTACT: David E. Mead, Office of Regulatory Analysis, (202) 357–8024.

Extending Comment Period and Rescheduling Public Conference

Notice is hereby given that the date for filing comments in Phase II of this proceeding is extended to and including October 4, 1985. The public conference has been rescheduled for November 13 and 14, 1985, beginning at 10:00 a.m. Requests to participate in the conference are due on or before October 4, 1985, and should be filed separately from the participant's written comments.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–19756 Filed 8–16–85; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–370]

Underground Construction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of limited reopening of rulemaking record.

SUMMARY: OSHA is reopening the rulemaking record concerning the proposed revision of 29 CFR 1926.800 (underground construction of tunnels and shafts) for the limited purpose of receiving public comment on new data pertaining to the prevalence of certain gassy conditions in tunnel construction and the impact of these data on the costs of operating under those conditions. The record will remain open for 60 days, until October 18, 1985.

DATES: The record will remain open and public comment will be received until October 18, 1985.

ADDRESSES: Written submissions for the record should be submitted in quadruplicate to the Docket Officer, OSHA Docket No. S-370, Room N-3670, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 523-7894. The JRB/SAIC report and data, all written submissions, and the entire record, will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Information and Public Affairs, OSHA, Room N-3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION: On August 5, 1983, OSHA published a Notice of Proposed Rulemaking [48 FR 35774] to revise 29 CFR 1926.800, which is found in Subpart S, "Tunnels and Shafts, Caissons, Cofferdams, and Compressed Air," of Part 1926, "Safety and Health Regulations for Construction." Section 1926.800 contains occupational safety and health standards to protect underground construction workers in tunnels and shafts. A public hearing was conducted March 13-15, 1984, to consider the issues raised by the proposed rulemaking. The record in the proceeding was closed and certified by Administrative Law Judge Charles P. Rippey on October 24, 1984.

In the Summary and Explanation of the proposal, OSHA discussed specific provisions for classifying an underground operation as gassy and for protecting employees in such operations from the hazards of fire and explosion. OSHA explicitly solicited comment on: whether an isolated gas pocket that exceeds the concentrations for a gassy classification warrants operating the entire job as gassy; what criteria should be applied to determine that the release of gas is from an isolated pocket; what conditions should permit the job to be declassified; and what procedures should be followed to assure that hazardous concentrations of gas do not subsequently endanger employees [48 FR 35808]. In addition, at the opening of the public hearing on the proposed standard, OSHA's Director of Safety Standards Programs again raised the issue whether a one-time air sample which indicates a potentially gassy condition warrants classifying the operation as gassy, or whether such classification should be based on air sampling conducted over a longer period of time (Tr. 13).

The public hearing generated considerable comment on the classification aspect of the proposal and the associated compliance costs. The thrust of these comments was that the OSHA proposal—and the economic analysis upon which it was based—did not fully address the economic impact of converting from a non-gassy to a gassy operation (e.g., Tr. 70-75; 104-111; 114-115; 174-175; 199-200; 363-366; 392-393). Several parties suggested a regulatory alternative establishing air quality criteria for classifying tunnels under a three-tiered system: non-gassy, potentially gassy, and gassy (e.g., Tr. 122-123; 496-499; 706-714).

As part of its review of the entire record in this proceeding, OSHA is currently analyzing such a tiered approach. The increased requirements of the "potentially gassy" and "gassy" classifications would be triggered if tunnel atmospheres reached specified levels. Under this system, tunnels would be classified as "potentially gassy" either if the tunnel atmosphere attained or exceeded 10 percent of the Lower Explosive Limit (LEL) for more than one day, or if the history of the geographic area or geological formation indicated that flammable gas in concentrations of 10 percent (or more) of the LEL was likely to be encountered. An increased frequency of air monitoring would then be required and, on the basis of the results of this sampling, any underground operation in which monitoring results remained for three consecutive days in the 10 to 20 percent LEL range despite the use of a permissible ventilation system would be classified as "gassy."

OSHA has recently received and is placing into the record new relevant data developed by a contractor, JRB Associates/Science Applications International Corporation (JRB/SAIC) as Exhibit #54. The new information affects costs attributable to underground construction activities which would be classified as "gassy" or "potentially gassy" as described above.

JRB/SAIC analyzed the geographic distribution of tunneling planned or expected to be constructed through the year 2000 and estimated the probability of tunnels in each location to be "potentially gassy." On the basis of the history of the geographic area or geological formation, JRB/SAIC estimates that approximately 17 percent of all projected tunneling operations for the years 1985 through 2000 will be classified as "potentially gassy" and will therefore require increased monitoring and permissible ventilation systems.

JRB/SAIC estimates that approximately five percent of these "potentially gassy" tunnels—about one percent of all identified tunnel projects—would probably not actually encounter gas at a level of 10 percent LEL, even though these tunnels would remain classified as "potentially gassy" based on the prior knowledge of the history of the area and the geological formation. The contractor also estimates that 90 percent of "potentially gassy" tunnels—about 15 percent of all identified tunnel projects—would reach or exceed 10 percent LEL, but for less than three consecutive days. The remaining five percent of "potentially gassy" tunnels—approximately one percent of all identified tunnel projects—would reach or exceed the 10 percent LEL trigger or three consecutive days despite the use of ventilation systems and, thus, would be classified as "gassy."

JRB/SAIC estimates that, of the tunnels being classified as "gassy," approximately 50 percent (or approximately 0.5 percent of all identified tunnel projects) would be reclassified "potentially gassy" by reducing the gas levels below 10 percent LEL using existing ventilation systems and other engineering methods. JRB/SAIC further estimates that the remaining 50 percent of these tunneling projects (or approximately 0.5 percent of all identified tunnel projects) would be required to operate as "gassy" for the remainder of the project.

JRB/SAIC has also provided estimates related to the cost of providing permissible ventilation systems with and without reversible controls at the surface.

OSHA has decided to invite the public to review the new data and to permit the submission of written comments on the JRB/SAIC report. Accordingly, the record will be reopened for 60 days for this limited purpose.

Authority

This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary for Labor for

Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

This action is taken pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 [48 FR 35736], and 29 CFR Part 1911.

Signed at Washington, D.C., this 13th day of August, 1985.

Patrick R. Tyson,

Acting Assistant Secretary for Labor.

[FR Doc. 85–19755 Filed 8–16–85; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW–9–FRL–2884–8]

Nevada; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Application of Nevada for Final Authorization, Public Hearings and Comment Period.

SUMMARY: The State of Nevada has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Nevada's application and has made the tentative decision that Nevada's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to the State to operate its program in lieu of the Federal program subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA). Nevada's application for final authorization is available for public review and comment and a public hearing will be held to solicit comments on the application if significant public interest is expressed.

DATES: If significant public interest is expressed in holding a hearing, a public hearing is scheduled for September 30, 1985 at 1:00 p.m. EPA reserves the right to cancel the public hearing if significant public interest in holding a hearing is not communicated to EPA by telephone or in writing by September 20, 1985. EPA will determine by September 23, 1985, whether there is significant interest to hold the public hearing. Nevada will participate in the public hearing held by EPA on this subject if a hearing is to be held. All written comments on Nevada's final authorization application must be received by the close of business on September 20, 1985. However, should EPA decide to hold a public hearing, comments will be accepted until September 30, 1985.

ADDRESSES: Copies of Nevada's final authorization application are available during the hours of 9:00 to 5:00 at the following addresses for inspection and copying:

Nevada Division of Environmental Protection, 201 S. Fall Street, Carson City, Nevada 89710, Phone: (702) 885–4670

U.S. EPA Headquarters Library, PM 211D, 401 M Street, SW., Washington, D.C. 20460, Phone: (202) 382–5926

U.S. EPA Region 9, Library—Information Center, 215 Fremont Street, San Francisco, California 94105, Phone: (415) 974–8076

Written comments on the application and written or telephone communication of interest in EPA's holding a public hearing on the Nevada application must be sent to Gary Lance, EPA Region 9 (T–2–1), 215 Fremont Street, San Francisco, CA 94105. If you wish to find out whether or not EPA will hold a public hearing on the Nevada application based upon EPA's decision that there was significant public interest in such a hearing, write or telephone after September 23, 1985, the EPA contact person listed below, or telephone Mr. Verne Rosse, Program Director, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources, 201 S. Fall Street, Carson City, Nevada 89710, (702) 885–4670. If significant interest is expressed EPA will hold a public hearing on Nevada's application for final authorization at 1:00 p.m. on September 30, 1985 at the Legislative Building, Capitol Complex, Room 200, Carson City, Nevada.

FOR FURTHER INFORMATION CONTACT: Gary Lance, EPA Region 9, RCRA Programs Section (T–2–1), 215 Fremont Street, San Francisco, CA 94105, Phone: (415) 974–8125, FTS: 454–8125.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6926(c)). EPA's implementing regulations at 40 CFR 271.121–271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260–263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase IIA covers general permitting procedures and technical standards for containers and tanks. Phase IIB covers incinerator facilities, and Phase IIC addresses landfills, surface impoundments, waste piles and land treatment facilities. By statute, all interim authorizations expire on January 31, 1986. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received final authorization, as described below.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR 271.1–271.23.

B. Nevada

Nevada received Phase I and Phase IIA&B interim authorization on July 19, 1983. On April 30, 1985, Nevada submitted a complete application for final authorization. Prior to its submission, Nevada solicited public comment on the draft application.

EPA has reviewed Nevada's official application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Nevada. In accordance with section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative decision on September 30, 1985 at the Legislative Building, Capitol Complex, Room 200, Carson City, Nevada, if significant public interest is expressed in holding a hearing. EPA reserves the right to cancel

the public hearing if significant public interest in holding a hearing is not communicated to EPA by telephone or in writing by September 20, 1985. EPA will determine by September 23, 1985, whether there is significant interest to hold the public hearing. The public may also submit written comments on EPA's tentative determination until September 20, 1985. Copies of Nevada's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

EPA will consider all public comments on its tentative determination. Issues raised by those comments may be the basis for a decision to deny final authorization to Nevada. EPA expects to make a final decision on whether or not to approve Nevada's program by November, 1985 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the U.S. EPA. The Federal requirements no longer applied in the authorized State, and the U.S. EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. However, until new Federal requirements were adopted as State law, they did not take effect in the authorized State.

In contrast, under the newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time they take effect in non-authorized States. The U.S. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. Thus, while States must still adopt HSWA related provisions, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Nevada after final authorization. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. If the HSWA related requirements are more stringent than Nevada's, the U.S. EPA will administer and enforce those portions of the HSWA in Nevada until the State receives authorization to do so. Among other things, this may entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once Nevada is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time, the State will assist the U.S. EPA's implementation of the HSWA under a Cooperative Agreement.

Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, regulated handlers must comply with the more stringent State requirements. Nevada is not being authorized for any requirement implementing the HSWA.

Compliance with Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Nevada's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian Lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: August 14, 1985.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 85-19741 Filed 8-16-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF LABOR

Assistant Secretary for Veterans' Employment and Training

41 CFR Part 61-250

Annual Report From Federal Contractors

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Advance Notice of proposed rulemaking.

SUMMARY: Enactment of the Veterans' Compensation, Education, and Employment Amendments of 1982 (Pub. L. 97-306) established the requirements for a report at least annually from Federal contractors to be submitted to the Secretary of Labor as well as requirements for implementing regulations. The legislation requires that Federal contractors report the numbers of special disabled and Vietnam-era veterans in their workforce and hired during the reporting period. This advance notice serves to advise interested parties concerning the content and scope of a proposed rule and to solicit comments regarding its adequacy, coverage and effectiveness.

DATES: Written comments must be received no later than September 18, 1985.

ADDRESS: Comments should be addressed to Donald E. Shasteen, for Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Attention: Mr. Joseph C. Juarez, Director, Office of Veterans' Employment and Training Programs.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. Juarez, Telephone (202) 523-9110.

SUPPLEMENTARY INFORMATION: Prior to January 29, 1982, it was a regulatory requirement for those contractors and subcontractors subject to 38 U.S.C. 2012(a) to submit a report, at least quarterly, to the appropriate office of the State employment service. Those reports were intended to provide both the State employment services and the Department of Labor with information regarding hiring and provision of required affirmative action for "special disabled veterans" and "veterans of the Vietnam-era," as defined under 38 U.S.C. 2011. Such a reporting requirement was not specifically required in the legislation at 38 U.S.C. 2012.

Subsequently, the regulatory requirement for the quarterly report at 41 CFR 60–250.4(d) was suspended until further notice by the Office of Federal Contract Compliance Programs in 47 FR 4258 (January 29, 1982). At that time the quarterly report had not been approved by the Office of Management and Budget under the Paperwork Reduction Act.

Pub. L. 97–306 was enacted on October 14, 1982. Section 310(a) requires Federal contractors subject to 38 U.S.C. 2012(a) to submit a report at least annually on the number of special disabled and Vietnam-era veterans in their workforce and the total number of employees and the number of such employees in each of the above veteran categories hired during the reporting period. Section 310(b) requires the Department of Labor to issue implementing regulations for that report. Responsibility for administering the reporting requirement lies with the Assistant Secretary for Veterans' Employment and Training (ASVET).

These regulations would not revise or replace the regulations in force at 41 CFR Part 60–250 which apply to veterans' affirmative action obligations of contractors and subcontractors administered by the Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration, Department of Labor. The regulations would implement the reporting obligations by requiring compliance with a reporting clause to be added to the affirmative action clause required in all Federal contracts which are subject to 38 U.S.C. 2012 and the OFCCP implementing regulations at 41 CFR Part 60–250.

Because of the unknown impact on the Federal contractor community, the Department is publishing this notice to obtain comments and recommendations to help determine the most effective means to satisfy legislative obligations of both the Department and Federal contractors.

The Department is particularly interested in receiving information on the following:

(1) Convenience of the location of the subject regulations at 41 CFR Part 61–250 which is separate from but in close proximity to current regulations at 41 CFR Part 60–250 which covers Federal contractor obligations under 38 U.S.C. 2012(a),

(2) Impact of the rule as to cost and time burdens of the recordkeeping and reporting imposed,

(3) Suggestions on a specific report form or format for purposes of computerizing information, and

(4) Feasibility of incorporating the required veterans' data (the items listed in § 61–250(a) (1) and (2) are those specified in 38 U.S.C. 2012(c)) into the existing Equal Employment Opportunity Employer Information Report EEO–1 (Standard Form 100).

List of Subjects in Part 61–250

Government procurement.

Therefore, draft regulations upon which commentors may base recommendations are set forth below.

CHAPTER 61—OFFICE OF THE ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING, DEPARTMENT OF LABOR

PART 61–250—ANNUAL REPORT FROM FEDERAL CONTRACTORS

Sec.

Authority: Sec. 310(a), Pub. L. 97–306, 96 Stat. 1442 (38 U.S.C. 2012).

§ 61–250.1 Purpose

This Part 61.250 implements 38 U.S.C. 2012(d). Each contractor or subcontractor who enters into a contract in the amount of $10,000 or more with any department or agency of the United States for the procurement of personal property and non-personal services (including construction) to whom 38 U.S.C. 2012(a) and 41 CFR Part 60–250 applies, shall submit a report according to requirements of § 61–250.10 of this part.

§ 61–250.2 Definitions.

(a) For the purposes of this part, and unless otherwise indicated in paragraph (b) of this section, the terms set forth in this part shall have the same meaning as set forth in 41 CFR Part 60–250.

(b) For the purposes of this part:

"Hiring location" means the establishment name and address where hiring takes place and personnel records are maintained.

"Job category" means any of the following: officials and managers, professionals, technicians, sales workers, office and clerical, craft workers (skilled), operatives (semiskilled), laborers (unskilled), service workers, as required by Standard Form 100, Equal Employment Opportunity Employer Information Report EEO–1.

"Special disabled veteran" means (i) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) for a disability rated at 30 percent or more, or (ii) a person who was discharged or released from active duty because of service-connected disability.

"Veteran of the Vietnam era" means a person who served more than 180 days of active military, naval, or air service, any part of which was during the period August 5, 1964, through May 7, 1975, and who (i) was discharged or released therefrom with other than a dishonorable discharge, or (ii) was discharged or released from active duty because of a service-connected disability. No veteran may be considered to be a veteran of the Vietnam era under this paragraph after December 31, 1991.

§ 61–250.10 Reporting requirements contract clause.

Each contractor or subcontractor described in § 61–250.1 of this part shall submit reports according to the following reporting requirements clause which shall be included in each of its covered government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract). It is the responsibility of the prime contractor to ensure that their subcontractors are informed of this reporting requirement contract clause. Such clause is considered as an addition to the affirmative action clause required by 41 CFR 60–250.4, the provisions of which continue in force until otherwise revised or amended. The reporting requirements clause is as follows:

Reporting Requirements

(a) The contractor agrees to report at least annually, to the Secretary of Labor, Attention: Office of the Assistant Secretary for Veterans' Employment and Training (OASVET), on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The report format shall be . . . (Note.—The format will be developed taking into account comments to this Advance Notice of Proposed Rulemaking).

(c) Reports shall 1) reflect employment activity as required in § 61–252.10(a)(1) for the most recent 12-month period ending March 31 of each year, and 2) the employment profile as required in § 61–250.10 (a)(2). Reports shall be due in accordance with instructions issued at the time report

forms are distributed. (This process is the same as for the EEO–1 report).

§ 61–250.11 Use of reports.

The reports received pursuant to § 61–250.10 of this part will be used to establish trends and identify practices of Federal contractors in hiring special disabled veterans and veterans of the Vietnam era. This information will be considered by the Office of Federal Contract Compliance Programs as one of several factors that are used in selecting contractors for compliance reviews.

§ 61–250.20 Monitoring of compliance.

During the course of its compliance reviews, OFCCP will affirm the contractor's fulfillment of the obligations pursuant to this part.

Comments on the above draft regulations should be submitted according to instructions previously stated in the "**ADDRESS**" section. Following analysis of the comments and recommendations received, the Department will issue proposed rulemaking.

Signed at Washington, D.C. This 9th Day of August, 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85–19624 Filed 8–16–85; 8:45 am]

BILLING CODE 4510–79

Notices

Federal Register
Vol. 50, No. 160
Monday, August 19, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Level of Donated-Food Assistance or Cash in Lieu Thereof for Nutrition Programs for the Elderly; Fiscal Year 1985

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: A notice published in the February 21, 1985 **Federal Register** announced the level of assistance for the Nutrition Program for the Elderly for Fiscal Year 1985 (50 FR 7203–7204). This notice clarifies the procedures the Department will employ if there is a need to vary the previously announced per meal level of assistance provided by the Secretary for nutrition services under the Older Americans Act of 1965, as amended. Based on the number of meals reported for the first quarter meal estimates, the total number of meals served in Fiscal Year 1985 may be higher than anticipated. This notice also reaffirms that the program will be funded within the $120,800,000 authorization limit.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Beverly King, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756–3660.

SUPPLEMENTARY INFORMATION: This action, which implements a mandatory provision of section 311 of the Older Americans Act of 1965, has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified as "nonmajor" because it does not meet any of the three criteria in the definition of "major rule" in the Executive Order. It will not have an annual effect on the economy of $100 million or more, will not not cause a major increase in costs or prices, and will not have a significant impact on competition, employment, productivity, innovation, or the ability of U.S. enterprises to compete. The purpose of this action is to notify States of the level of donated-food assistance to be provided for nutrition services under the Older Americans Act during Fiscal Year 1985.

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review.

Section 311(a)(4) of the Older Americans Act of 1965 requires the Secretary, in donating foods or providing cash in lieu thereof the nutrition programs for the elderly funded under the Act, to adjust the minimum level of assistance during each fiscal year to reflect changes in the series for food away from home of the Consumer Price Index (CPI) for all Urban Consumers published by the Bureau of Labor Statistics (BLS) of the Department of Labor. Notwithstanding this provision for adjustment, section 311(a)(2) of the Act requires the Secretary to reduce the level of assistance per meal in any fiscal year in which compliance with section 311(a)(4) costs more than the amount authorized to be appropriated for that year.

In other words, in instances in which the Secretary is required to use this authority, the per-meal level of assistance ultimately depends on the number of meals served. Whenever compliance with section 311(a)(4) costs more than the amounts of funds authorized, the per-meal rate is then determined by the following equation:

Meal rate = total funds authorized divided by total number of meals served.

Section 310 of Pub. L. 98–459, signed into law on October 9, 1984, amended section 311(c)(1) of the Act to authorize an appropriation of $120,800,000 for Fiscal Year 1985 to carry out the provisions of section 311(a)(4).

Based on meal participation data reported for Fiscal Year 1984, it was announced in the February 21 **Federal Register** notice that some 212,800,000 meals were anticipated to be served during Fiscal Year 1985. Given the total funding of $120.8 million, the Fiscal Year 1985 per meal level of assistance was set at 56.75 cents per meal in accordance with section 311(c)(2) of the Act.

The announcement also stated that a further adjustment in the level of assistance might be necessary should the actual meal participation vary from that anticipated and that notice of such a further adjustment would be given in the **Federal Register**.

On the basis of the number of meals reported for the first quarter, the total number of meals served in Fiscal Year 1985 may exceed the previous estimate of 212,800,000. It is estimated that the total number of meals may range between 220 million and slightly above 230 million. In order to provide assistance within the $120,800,000 authorization limit and yet take the increased number of meals into account, the per-meal level of assistance may need to be revised. Using the formula cited above, the following table provides examples of how the meal rate may vary depending on the final meal estimate:

Per meal subsidy (cents)	Meals served (millions)
54.90	220
53.69	225
52.52	230

However, because meal participation data for nutrition programs for the elderly are not required to be reported to FNS until 90 days following the close of each Federal fiscal quarter, final Fiscal Year 1985 data will not be available until approximately January 1, 1986. The final rate will be determined at that time, using the formula cited above, and will apply to all meals served during Fiscal Year 1985. States will be notified of the final rate by an announcement.

(42 U.S.C. 3030a)

(Catalog of Federal Domestic Assistance No. 10.550)

Dated: August 14, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85–19728 Filed 8–16–85; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Modification of National Forest Boundaries in Florida and Georgia

Purusant to authority vested in the Secretary of Agriculture by section 11 of

the Act of March 1, 1911 (36 Stat. 961), as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Natural Resources and Environment, notice is hereby given of the boundary retraction of the Apalachicola National Forest in Florida and the extension of the boundary of the Ocala National Forest in Florida as were authorized July 28, 1982, as described below, and all lands acquired within the extended boundary of the Ocala National Forest that are subject to the Act of March 1, 1911, are designated for administration as part of the Ocala National Forest. The boundary of the Chattahoochee National Forest in Georgia as established November 27, 1959, and as described below is hereby rescinded due to disposal of all National Forest System lands within the described boundary.

Retraction of Boundary—Apalachicola National Forest, Florida, Tallahassee Meridian

Wakulla County

T. 3 S., R. 1 W.,
Sec. 9, NW¼, remove boundary;
Secs. 75, 76, and 77, retract boundary west to present location of U.S. Highway 319.
T. 4 S., R. 1 W.,
That part of Forest Service tract 1139a lying in unnumbered section north of section 90, remove boundary.
T. 4 S., R. 2 W.,
Sec. 24, retract boundary west to present location of U.S. Highway 319;
Sec. 36, retract boundary west to present location of U.S. Highway 319.

The area described contains 740 acres more or less.

Extension of Boundary—Ocala National Forest, Florida, Tallahassee Meridian

The boundary of the Ocala National Forest is extended to encompass lands acquired under authority of the Weeks Act of March 1, 1911, described as:

Lake County

T. 17 S., R. 27 E.,
Sec. 28, lots 3 and 4, SW¼, NW¼SE¼;
Sec. 29, SE¼SE¼.

The area described contains 324.19 acres more or less.

Rescission of Boundary—Chattahoochee National Forest, Georgia

Whitfield County

The boundary of the Chattahoochee National Forest as hereinafter described is identical to the description contained in Executive Order 10851, of November 27, 1959, establishing the Limestone Valleys Land Utilizations Project (GA–LU–23) as part of the Chatahoochee National Forest. All National Forest System lands within the described boundary have been transferred out of Federal ownership.

Beginning at a point on the Tennessee-Georgia State Line, the county line corner of Catoosa and Whitfield Counties, Georgia; thence south and west with said county line to Tiger Creek Road; thence southeasterly with said road to a point west of the northwest corner of U.S. Tract No. 158; thence due east to said corner; thence south with west boundary of tract 158; thence east with south boundary of said tract and continuing east to the westerly right-of-way line of the Southern Railroad right-of-way; thence south with said right-of-way to a point due east of the northeast corner of U.S. Tract No. 303; thence west to said corner with the north boundary thereof, continuing west to the westerly right-of-way line of Waring Road; thence south with said road to the north boundary line of U.S. Tract 156; thence with said tract to its southeast corner near the Pleasant Grove Road; thence in a southeasterly and northeasterly direction with said road to the west and right bank of Coahulla Creek; thence up and with said bank of Coahulla Creek 1¼ miles to a point where an unnamed branch of the Creek enters from the northeast; thence due east to a point on the right and west bank of the Conasauga River; thence up and with the meanders of the Conasauga River and Sugar Creek to the Tennessee State Line; thence west with the Tennessee-Georgia State Line to the place of beginning.

The boundary described encompasses about 55,905 acres. This rescission is effective upon publication in the **Federal Register.**

Dated: August 12, 1985.

Richard D. Siegel,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 85–19721 Filed 8–16–85; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–407]

Termination of Antidumping Duty Investigation; Barbed Wire and Barbless Fencing Wire From Brazil

AGENCY: International Trade Administration, Import Administration.

ACTION: Notice.

SUMMARY: On July 25, 1985, Forbes Steel and Wire Corporation withdrew its antidumping duty petition, filed on November 19, 1984, on barbed wire and barbless fencing wire from Brazil. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Jay Kenkel, 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) 377–4929.

SUPPLEMENTARY INFORMATION:

Case History

On November 19, 1984, we received a petition from Forbes Steel and Wire Corporation filed on behalf of the U.S. industry producing barbed wire and barbless fencing wire.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on December 10, 1984 (49 FR 49127). On January 3, 1985, the ITC found that there was a reasonable indication that imports of barbed wire and barbless fencing wire from Brazil materially injure, or threaten material injury to, a United States industry. On April 29, 1985, we made a preliminary determination that barbed wire and barbless fencing wire from Brazil were being, or were likely to be, sold in the United States at less than fair value (50 FR 18903). On May 24, 1985, we postponed the final determination (50 FR 24013).

Scope of Investigation

The products under investigation are barbed wire and barbless fencing wire, as currently provided for in the Tariff Schedules of the United States, Annotated (TSUSA) items 642.0200 and 642.1105.

Withdrawal of Petition

On July 25, 1985, petitioner notified us that it was withdrawing its petition, and requested that the investigation be terminated. Under section 734(a) of the Tariff Act of 1930, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), 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 Brazil 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 petitioner's withdrawal and our intention to terminate.

For these reasons, we are terminating our investigation.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 12, 1985.

[FR Doc. 85-19746 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-433-401]

Certain Carbon Steel Product From Austria; Final Determination of Sales at Less Than Fair Value and Final Determination of Sales at Not Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that hot-rolled carbon steel flat-rolled products from Austria are being, or are likely to be, sold in the United States at less than fair value and that cold-rolled carbon steel flat-rolled products from Austria are not being, nor are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determinations. We are directing the U.S. Customs Service to continue to suspend the liquidation of all entries of hot-rolled flat-rolled products from Austria that are entered, or withdrawn from warehouse, for consumption, on or after June 3, 1985, and to require a cash deposit or bond for each entry in an amount equal to 2.2 percent *ad valorem*. We are directing the U.S. Customs Service to discontinue suspension of liquidation of all entries of cold-rolled flat-rolled products from Austria and to release all cash deposits or bonds.

EFFECTIVE DATE: August 19, 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, DC 20230; telephone: (202) 377-3963

Final Determinations

Based upon our investigations, we have determined that hot-rolled flat-rolled products from Austria are being, or are likely to be, sold in the United States at less than fair value and that cold-rolled flat-rolled products from Austria are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C 1673d) (the Act).

We made fair value comparisons for all sales of merchandise to the United States during the period of investigation. Comparisons were based on the United States price and foreign market value. The weighted-average margin for cold-rolled flat-rolled products is 0.2 percent percent *ad valorem*. This is *de minimis* and our final determination with regard to cold-rolled products is negative and the investigation is terminated. The weighted-average margin for hot-rolled flat-rolled products is 2.2 percent percent *ad valorem* and our final determination with regard to hot-rolled products is affirmative.

Case History

On December 19, 1984, we received a petition from the United States Steel Corporation on behalf of the domestic carbon steel flat-rolled products industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleged that imports of certain carbon steel products from Austria 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 materially injuring or are threatening material injury to a United States industry. The petition also alleged that sales of the subject merchandise were being made at less than the cost of production. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping investigations. We notified the ITC of our actions and initiated such investigations on January 14, 1985 (50 FR 1911). On February 4, 1985, the ITC determined that there is a reasonable indication that imports of certain carbon steel products from Austria are materially injuring a U.S. industry (50 FR. 6070). However, no indication of injury was found on imports of galvanized flat-rolled products and this product was dropped from the investigations.

We presented an antidumping duty questionnaire to counsel for Voest-Alpine AG (VA), the sole Austrian producer of the products under investigation for export to the United States. On June 3, 1985, we made an affirmative preliminary determination (50 FR 23339). Between June 10 and July 2, we verified VA's questionnare response in Austria and New York. No hearing was requested by any of the parties to the proceeding.

Products Under Investigation

The products under investigation are hot-and cold-rolled carbon steel flat-rolled products. A further description of the products is contained in the appendix to this notice.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

We used the purchase price of the subject merchandise, as provided in section 772(b) of the Act, to represent the United States price because the merchandise was sold to unrelated U.S. purchasers prior to its importation into the United States. We calculated the purchase price based on the C.I.F duty paid price to the first U.S. unrelated purchaser. We deducted brokerage charges, U.S. duty, inland freight, ocean freight, and marine insurance.

Foreign Market Value

In accordance with section 773(a)(1), we used home market prices for calculating foreign market value. We made comparisons of "such or similar" merchandise based on grade, thickness, width surface treatment, and quality categories selected by Commerce Department industry experts.

We deducted home market discounts, where appropirate. We adjusted for differences in packing and merchandise, where appropriate. We made adjustments for differences in circumstances of sale related to commissions and credit expense pursuant to § 353.15 of our regulations. Where there were commissions in one market and not in the other, we offset the commissions with indirect selling expenses in the other market.

Respondent requested that we include an adjustment to the U.S. price for any profits or losses from dealing with an intermediate unrelated foreign trading company on certain sales to the United States. We are without authority to make an adjustment to purchase price. Instead, we made a circumstance of sale adjustment to foreign market value to account for these gains and losses (see response to comment 15).

The petitioner alleged that sales in the home market were at prices below the cost of production. We examined production costs, including materials, labor, and general expenses, and found some sales below cost. Where below-cost sales constituted more than 10 percent of sales in any merchandise

category, we eliminated them from our calculations. We still had sufficient home market sales for comparisons for all of the merchandise under investigation.

In calculating foreign market value, we made currency conversions from Austrian schillings to United States dollars in accordance with § 353.56(a)(1) of our regulations, using the certified daily exchange rates.

Verification

In accordance with section 776(a) of the Act, we verified the information provided by the respondent by using standard verification procedures, including examination of relevant sales and financial records of the company.

Petitioner's Comments

Comment 1: Specific product costs are understated in relation to VA's average cost for flat-rolled products. The disparity between costs of production alleged by VA and the average for all flat-rolled products may be attributable, in part, to misapplication of unfavorable manufacturing variances. Further, the costs alleged by VA for the products under investigation must be rejected unless and until individual product costs are reconciled with the average cost of all flat-rolled products.

DOC Position: In determining if the specific product costs were accurately submitted, the Department used it standard procedures. These procedures include verifying the cost to the company's records, determining the accuracy of the amounts and the appropriateness of the allocations of the variances and assessing the reasonableness of the relationship of product costs to other facts of the investigation. These other facts include the costs of the other product categories.

Comment 2: Cost of production or a surrogate for an arm's length price rather than transfer price should be used to value materials purchased from related companies.

DOC Position: We agree. We do not use transfer prices between related parties in our calculations as these prices may be established by the company for a variety of corporate purposes and may not reflect actual cost experience. Based on the verification and subsequent inquiry and analysis, we determined that the submitted costs of materials purchased from related companies approximated cost of production of the related company. Accordingly, we used the submitted costs to value these materials.

Comment 3: VA's energy cost appears to be unrealistically low.

DOC Position: The energy cost used in the calculations was verified from VA's records.

Comment 4: The selling, general and administrative (SG&A) expenses in VA's submission were not all calculated using actual costs and were therefore inconsistent. Further, the response and verification report do not indicate whether any G&A expenses for divisions other than the Metallurgy Division at the Linz plant were properly excluded.

DOC Position: We agree. We addressed these inconsistencies during the verification and have adjusted the submitted costs, using actual costs, for the final determination. We have excluded the G&A expenses of other divisions at the Linz plant from our calculation.

Comment 5: Because the costs of production are underestimated, the amount of SG&A expenses must also be underestimated. The response is unclear as to the allocation of expenses to the Linz plant. SG&A allocated to the Linz plant appears very small for a steel producer.

DOC Position: We determined during verification that general and administrative expenses were fully allocated among the Linz and other plants on a reasonable basis.

Comment 6: Interest income should not be offset against interest expense when allocating to cost of production. Rather, gross interest expenses should be allocated.

DOC Position: We disagree. Since the interest income was related to the steel-making operations and was a result of normal business activity, it was offset against interest expense.

Comment 7: Adjustments for differences in merchandise must be based on differences in variable manufacturing costs and not full cost of production of the products under investigation.

DOC Position: We agree. It is our policy to adjust only for costs directly related to the differences in physical characteristics of the particular products under investigation. Therefore, we considered only differences in variable manufacturing costs for the final determination.

Comment 8: Unrealized foreign exchange gains and losses must be included in the cost of production.

DOC Position: We requested that the company provide the sources giving rise to the unrealized exchange losses. VA did not provide sufficient detail for us to determine what portion of the losses should be attributed to the sales of other products and what portion should be identified with the cost of production. Therefore, we allocated the entire amount to cost of production.

Comment 9: The Department should compute VA's cost of production for merchandise sold in the home market using VA's home market SG&A expenses rather than an average for all markets.

DOC Position: We agree. In determining whether home market sales are being made at less than the cost of producing the merchandise under section 773(b), we compare actual home market sales prices with the costs of production attributable to those home market sales. We adjusted the submitted costs of production to include the home market portion of selling expenses.

Comment 10: As no actual credit expenses were submitted, we should impute them.

DOC Position: We agree. We have made an adjustment to foreign market value for the difference in circumstances of sale to account for the different credit terms in the U.S. and home markets. We applied an appropriate interest rate, which was provided by U.S. Steel as the best information available, to the average number of days payment was outstanding in each market to calculate the credit costs in those markets.

Comment 11: The respondent claims certain "discounts" and "rebates" paid to trading companies involved in home market sales. These trading companies receive payments which are, in reality, in the nature of commissions. The Department should therefore offset the deductions against indirect selling expenses in the United States.

DOC Position: We agree that these payments are commissions and not discounts or rebates. Home market purchasers contact VA to establish price and terms of sale. Once the parties have agreed on the terms of sale, the purchaser designates a trading company to handle the paperwork. VA then sells the steel to the trading company at a reduced price and the trading company resells to the purchaser at full price. Under these facts, the payments are clearly commissions paid to the trading company for services rendered in connection with the sale. Since these are not reductions of sales price to the ultimate purchaser, these are not discounts. We have therefore treated them as commissions.

Comment 12: No adjustments for commissions or discounts should be made on sales to related trading companies in the home market.

DOC Position: We agree. We do not use payments between related parties in our calculations as these payments may not reflect actual cost experience. We

have adjusted our calculations to reflect this.

Comment 13: A number of other discounts were not reported on a sale by sale basis and should be disregarded.

DOC Position: We disagree. The discounts were reported in sufficient detail to determine the amounts and to verify payment.

Comment 14: VAIT sales into the European "grey market" should not be taken into account in making margin calculations.

DOC Position: VA knew, when it sold the material, that the ultimate destination of the material was the United States. Therefore, the sales are properly included in our calculations. These sales constitute 60 percent of the imports of the products under investigation to the United States during the period of investigation.

Comment 15: We should take into account Austrian government subsidies in calculating cost of production.

DOC Position: We have examined the subsidies found in the concurrent countervailing duty investigation, and it was apparent that they would have an insignificant effect on the antidumping duty margins. Therefore, we have disregarded them as provided for in § 353.23 of our regulations.

Comment 16: The product groupings in the preliminary determination were too broad. The two steel quality groups used for grouping included a number of different grades of steel. Also, additional difference in merchandise adjustments should be made.

DOC Position: We agree. We are narrowing the groups by subdividing the quality groups by grades of steel, and we are making additional differences in merchandise adjustments where necessary to reflect the new groups and to correct any incorrect adjustments.

Comment 17: The selling expenses of related trading companies should be included in VA's cost of production.

DOC Position: We agree. When determining the costs of production, the Department uses the costs incurred by the consolidated corporate entity, which includes the parent company, its subsidiaries, and its related companies. The selling expenses incurred by the related trading companies are proper costs of the cost of production and have therefore been included.

Interested Party Comment

Comment: Sixty percent of the U.S. sales were reported in an untimely manner and should be disregarded.

DOC Position: We disagree. We had sufficient time to verify these sales and have used them in our comparisons.

Respondent's Comments

Comment 1: The use of average selling expenses for all markets in the computation of cost of production rather than only home market selling expenses is consistent with the statute and no adjustment to reported cost of production is necessary.

DOC Position: We disagree. Since market specific expenses will give a more precise cost of production, it has been the Department's policy to use home market selling expenses in the computation of cost of production when market specific expenses are determinable.

Comment 2: The differences in merchandise adjustment for floor plate, as submitted by VA, (direct materials, direct labor, variable overhead, fixed overhead, and SG&A expenses) is correct.

DOC Position: We disagree. Our policy is to compute differences in merchandise adjustments based on variable manufacturing costs (direct materials, direct labor, and variable overhead) since it is those inputs which directly contributes to the physical differences. Fixed overhead and SG&A expenses are allocated expenses which do not directly contribute to the physical differences.

Comment 3: Average costs by product category (hot-rolled coil, cold-rolled coil, and floor plate) provide an appropriate and adequate basis for cost of production comparisons.

DOC Position: We agree, in this case, that average costs by product category should be used because we have determined, from the best information available, that the costs were closely distributed around the average and that the average would be representative.

Comment 4: The allocation of gains and losses of subsidiary companies which supplied raw materials to VA to adjust transfer prices results in an accurate statement of the cost to VA.

DOC Position: We disagree with VA's methodology because transfer prices between related companies may not reflect actual costs. In this case, however, comparison with either unrelated supplier price or the costs incurred by the related company to produce the raw materials demonstrated that the prices in the submission were reasonable. Therefore, we used the submission prices.

Comment 5: The Department should make an adjustment to purchase price to account for the effect of VA's sales to U.S. customers through an unrelated third party.

DOC Position: We are without the authority to make such an adjustment. We can make only the adjustments specified in section 772(d) of the Act. The requested adjustment does not fall within any of these adjustments. Instead, we have made a circumstance of sale adjustment to foreign market value to account for the loss or gain to VA resulting from the third party's participation in the U.S. transaction. Because the third party's participation is a circumstance directly related to the U.S. sales under investigation, we are satisfied that it is a bona fide difference in the circumstances of the sales compared, which accounts, at least in part, for price differences, or lack thereof, in the two markets.

ITC Determination

In accordance with section 735(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to these investigations. 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 written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether imports of hot-rolled flat-rolled products materially injure, or threaten material injury to a U.S. industry within 45 days after we make our final determinations. Since our final determination on cold-rolled flat-rolled products is negative, the ITC will not make a determination on that product.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of hot-rolled flat-rolled products from Austria that are entered, or withdrawn from warehouse, for consumption, on or after June 3, 1985. The United States Customs Service shall require a cash deposit equal to the weighted-average amounts by which the foreign market value of the merchandise subject to these investigations exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice. We are directing United States Customs Service to discontinue suspension of liquidation of all entries of cold-rolled flat-rolled products from Austria and to release any cash deposits or bonds.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both

antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit for that amount. The level of export subsidies has been determined in the final affirmative countervailing duty determination on certain carbon steel products from Austria which is being published in this issue of the **Federal Register.** Accordingly, we will subtract the level of export subsidies from the dumping margins for hot-rolled flat-rolled products for bonding or deposit purposes.

HOT-ROLLED FLAT-ROLLED PRODUCTS

Manufacturer/producer/exporter	Weighted-average margin percentage
Voest-Alpine	2.2
All Others	2.2

COLD-ROLLED FLAT-ROLLED PRODUCTS

Manufacturer/producer/exporter	Weighted-average margin percentage
Voest-Alpine	0.2
All Others	0.2

These determinations are published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Theodore W. Wu,

Acting Assistant Secretary for Trade Administration.

August 12, 1986.

Appendix

Scope of Investigations

The products under investigation are hot-rolled flat-rolled products and cold-rolled flat-rolled products.

The term "*hot-rolled flat-rolled products*" covers hot-rolled carbon steel products, whether or not corrugated or crimped, not cold-rolled, not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal, and not clad; 0.1875 inch or more in thickness and over 8 inches in width and pickled, as currently provided for in item 607.8320 of the *Tariff Schedules of the United States, Annotated* (TSUSA), or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*.

The term "cold-rolled flat-rolled products" covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal, and not clad; over 12 inches in width and 0.1875 inch in thickness, as currently provided for in item 607.8320 of the *TSUSA*, or over 12 not inches in width and under 0.1875 inch in thickness, whether or not in coils; as currently provided for in items 607.8350, 607.8355, 607.8360 of the *TSUSA*.

[FR Doc. 85-19747 Filed 8-16-85; 8:45 am]
BILLING CODE 3510-DS-M

[A-455-501]

Termination of Antidumping Duty Investigations; Certain Carbon Steel Products From the German Democratic Republic (GDR)

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In a letter dated August 5, 1985, the petitioner withdrew the antidumpting duty petition, filed on December 19, 1984, on certain carbon steel products (carbon steel plate, cold-rolled carbon steel flat-rolled products and hot-rolled carbon steel flat-rolled products) from the GDR. Based on the withdrawal, we are terminating these investigations.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Terri A. Feldman, 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) 377-3534.

SUPPLEMENTARY INFORMATION:

Case History

On December 19, 1984, we received a petition from United States Steel Corporation on behalf of the U.S. industrty producing certain carbon steel products from the GDR. After reviewing the petition, we determined that it contained sufficient grounds upon which the initiate antidumping duty investigations. We notified the International Trade Commission (ITC) of our action and initiated the investigations on January 18, 1985 (50 FR 1913). On February 14, 1985, the ITC found that there was a reasonable indication that imports of certain carbon steel products from the GDR materially injure, or threaten material injury to, a United States industry. On May 28, 1985 we made a preliminary determination that certain carbon steel products from the GDR were being, or were likely to be, sold in the United States at less than fair value (50 FR 23340).

Scope of Investigations

The products under investigation are carbon steel plate, hot-rolled carbon steel flat-rolled products, and cold-rolled carbon steel flat-rolled products.

The term "carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6620 and 607.6625 of the *Tariff Schedules of the United States Annotated (TSUSA)*. Semifinished products of solid rectangular cross section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

The term "*cold-rolled carbon steel flat-rolled products*" covers cold-rolled carbon steel flat-rolled products, whether or not corrogated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width, and 0.1875 inch or more in thickness; as currently provided for in item 607.8320 of the *TSUSA;* or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils; as currently provided for in items 607.8350, 607.8355 or 607.8360 of the *TSUSA*.

The term "*hot-rolled carbon steel flat-rolled products*" covers hot-rolled carbon steel flat-rolled products, whether or not corrogated or crimped; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; pickled, and currently provided for in item 607.6610 of the *TSUSA*.

Withdrawal of Petition

In a letter dated August 5, 1985, counsel for United States Steel Corporation withdrew their December 19, 1984, antidumpting duty petition, and requested that the investigations be terminated. Under section 734(a) of the Tariff Act of 1930, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), upoon 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 a bilateral arrangement with the government of the GDR to limit the volume of imports of these products. We have assessed the public interest factors set out in section 734(a)(2) of the Act, and consulted with potentially affected producers, workers, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultations, we have determined that termination would be in the public interest.

We have notified all parties to the investigations and the ITC of petitioner's withdrawal and our intention to terminate.

For these reasons, we are terminating our investigations.

August 12, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-19748 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-307-503]

Termination of Antidumping Duty Investigation; Oil Country Tubular Goods From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On June 26, 1985, U.S. Steel Corporation withdrew the antidumping duty petition on oil country tubular goods (OCTG) from Venezuela. On July 22, 1985, Lone Star Steel Company and CF&I Steel Corporation also withdrew. Based on the withdrawal, we are terminating this investigation.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, 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) 377-2830.

SUPPLEMENTARY INFORMATION:

Case History

On February 28, 1985, we received a petition from U.S. Steel Corporation on behalf of the U.S. industry producing OCTG. We subsequently allowed Lone Star Steel Company and CF&I Steel Corporation to become petitioners in this investigation.

After reviewing the petition, we determining that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the International Trade Commission (ITC) of our action and initiated this investigation on March 20, 1985 (50 FR 12071). On April 15, 1985, the ITC found that there was a reasonable indication that imports of OCTG from Venezuela materially injure, or threaten material injury to, a United States industry.

Scope of Investigation

The products covered by this investigation are oil country tubular goods, which are hollow steel products of circular cross-section intended for us in the drilling of oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications, as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA) under items 610.3216, 610.3219, 610.3233, 610.3249, 610.3252, 610.3256, 610.3258, 610.3721, 610.3722, 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, 610.5240, 610.5242, 610.5243, and 610.5244.

Withdrawal of Petition

On June 26, 1985, U.S. Steel Corporation notified us that they were withdrawing their petition, and requested that the investigation be terminated. On July 22, 1985, Lone Star Steel Company and CF&I Steel Corporation also notified us that they were withdrawing. This withdrawal is based on an arrangement with the government of Venezuela to limit the volume of imports of these products. Under section 734(a) of the Tariff Act of 1930 (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. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultations, 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.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 12, 1985.

[FR Doc. 85-19749 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-433-402]

Final Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products From Austria

AGENCY: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Austria of certain carbon steel products. The estimated net subsidy is 2.27 percent *ad valorem*. We have notified the United States International Trade Commission (ITC) of our determinations.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-0167 or 377-3464.

SUPPLEMENTARY INFORMATION:

Final Determinations

Based upon our investigations, we determine that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Austria of certain carbon steel products. For purposes of these investigations, the following programs are found to confer subsidies:

- Equity Infusions;
- Grants to the Austrian Steel Industry;
- Kontrollbank Export Financing to Voest-Alpine AG; and
- Kontrollbank Export Financing to an East German Company.

We determine the estimated net subsidy to be 2.27 percent *ad valorem*.

Case History

On December 19, 1984, we received a petition from United States Steel Corporation of Pittsburgh, Pennsylvania,

filed on behalf of the U.S. industry producing certain carbon steel products. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Austria of certain carbon steel products directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on January 8, 1985, we initiated such investigations (50 FR 2318). We stated that we expected to issue preliminary determinations by March 14, 1985.

Since Austria is a "country under the Agreement" within the meaning of section 701(b) of the Act, injury determinations are required for these investigations. Therefore, we notified the ITC of our initiation. On February 4, 1985, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of hot-rolled carbon steel sheet and cold-rolled carbon steel plates and sheets from Austria. The ITC also determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of galvanized carbon steel sheets from Austria which are alleged to be subsidized 950 FR 6070).

We presented a questionnaire concerning the allegations to the government of Austria in Washington, D.C. on January 28, 1985. A supplemental questionnaire was presented on February 14, 1985. The government of Austria and Voest-Alpine AG, provided responses to our questionnaires on February 28, 1985. On the basis of the information contained in these responses, we made preliminary determinations on March 14, 1985, (50 FR. 11220). We verified the responses of the government of Austria and Voest-Alpine AG from March 25–29, 1985, and from June 10–14, 1985.

On March 22, 1985, United States Steel Corporation filed a request for extension of the deadline date for the final countervailing duty determinations to correspond with the date of the final determinations in the antidumping investigations of the same products. Pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade Act of 1984, the Department granted an extension of the aforementioned deadline to August 12, 1985, the same deadline for the final determinations in the antidumping investigations.

Scope of the Investigations

The products covered by these investigations are certain carbon steel products, which comprise:

- Hot-rolled carbon steel sheet; and
- Cold-rolled carbon steel sheet.

These products are more fully described in the Appendix to this notice.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigations. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Voest-Alpine AG is the only producer in Austria of the products under investigation. For purposes of these determinations, the period for which we are measuring subsidization ("the review period") is calendar year 1984.

The Department of Commerce has consistently held that government provision of equity does not *per se* confer a subsidy. Government equity purchases bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether the company was a reasonable commercial investment. Voest-Alpine AG's shares are not publicly traded and there are no market-determined prices for its shares.

Therefore, we had to determine whether the equity infusions into Voest-Alpine AG were reasonable commercial investments. To make this determination, we reviewed and assessed Voest-Alpine AG's financial statements from 1971 to 1983 as well as its 1984 preliminary statements. In analyzing the financial statements, we considered the information from the viewpoint of an investor. More specifically, we analyzed the following data:

- Rate of return on sales;
- Rate of return from operations;
- Rate of return on equity;
- Debt to equity ratio; and
- Current ratio.

Based on our review of the financial statements, and responses of the company and government, we determine that the government's equity infusions into Voest-Alpine AG between 1978 and 1984 were on terms inconsistent with commercial considerations.

Based upon our analysis of the petition, the responses to our questionnaire, our verification and comments filed by petitioners and respondents, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are provided to manufacturers, producers, or exporters in Austria of certain carbon steel products under the following programs:

A. Equity Infusions

Voest-Alpine AG received equity infusions, during the period 1975–1984, from Osterreichische Industrieverwaltungs-Akteiengesellshaft (OIAG), the government holding company for state-owned enterprises. Portions of the equity infusions into Voest-Alpine AG have been transferred to an affiliated company, Vereinigte Edelstahlwerke AG (VEW). Under the terms of applicable legislation, Voest-Alpine AG was required to transfer the funds to VEW. VEW does not produce or export any of the merchandise under investigation, and therefore we do not consider equity infusions to VEW to benefit the products under investigation.

As discussed in the "Analysis of Programs" section, we determine that Voest-Alpine AG was not a reasonable commercial investment and was unequityworthy from 1978 to 1984; thus the government equity infusions between 1978 and 1984 were on terms inconsistent with commercial considerations. Therefore, we determine that these equity infusions confer benefits which constitute a subsidy.

Following the methodology contained in the Subsidies Appendix, we have calculated the benefit from these equity infusions by multiplying the difference between Voest-Alpine AG's estimated rate of return on equity in 1984 and the national average rate of return on equity during the same period by the total amount of equity infusions made since 1978. The national average rate of return on equity was taken from *Capital International Perspective*. We then allocated the aggregate benefit over the value of total sales of all products produced by Voest-Alpine AG. On this basis we determine the estimated net subsidy to be .04 percent *ad valorem*.

B. Grants to the Austrian Steel Industry

Under Law 602/1981, the Austrian government authorized a grant of 2

billion Austrian schillings for the structural improvement of Voest-Alpine AG. These funds were disbursed through OIAG to Voest-Alpin AG in 1981 and 1982.

Law 589/1983 further permitted OIAG to raise new funds beginning in 1983. These funds were to be used for improving the economic structure of nationalized industrial enterprises. Of the funds raised by OIAG pursuant to the 1983 law, a portion went to Voest-Alpine AG in the form of equity infusions; these are discussed above. Another portion was made available to Voest-Alpine AG in the form of grants, approximately 85 percent of which had been disbursed by June 1985.

We find these grants to be limited to a specific enterprise or industry or to a specific group of enterprises or industries. Therefore, we determine these grants to be countervailable.

To calculate the amount of the benefit, we allocated the grants over 15 years (the average useful life of renewable assets in the steel industry). Discount rates have been developed for the years in which the grants were agreed upon. The grants authorized under the 1981 law have been allocated using Voest-Alpine AG's 1981 weighted cost of capital as our discount rate (where applicable Voest-Alpine AG's 1984 floating interest rates on its long-term loans, received in 1981, were used to determine the weighted cost of capital). For the grants authorized by the 1983 law, the date of agreement (allocation) varies, since the amounts and the date of allocation were the subject of negotiation between OIAG and Voest-Alpine AG. Therefore, for grants received pursuant to the 1983 law we have used Voest-Alpine AG's 1983 weighted cost of capital as our discount rate, and where applicable the 1984 floating interest rates on the capital were incorporated into these calculations. The portion of the grant authorized by the 1983 law, but which had not been disbursed as of June 1985, was not included in these calculations.

We allocated the aggregate benefit over the value of total sales of all products produced by Voest-Alpine AG. Based on this methodology we find the estimated net subsidy conferred by these grants to 1.54 percent *ad valorem*.

C. Kontrollbank Export Financing to Voest-Alpine AG

Under this program, export financing credits are extended by commercial banks, to exporters or buyers, which are then refinanced through one of the export financing schemes operated by Osterreichische Kontrollbank Aktiengesellschaft (OKB). The OKB was founded in 1946 to provide services not normally available from commercial banks. It has administered the official Austrain Export Credit and Guarantee Scheme on behalf of the Federal Ministry of Finance since 1950. OKB's twelve shareholders are exclusively Austrian credit institutions of which two are large nationalized banks.

Voest-Alpine AG received export financing from commercial banks, which was then refinanced by the Kontrollbank, at interest rates lower than the national average short-term interest rate in Austria during 1984. For purposes of these determinations, we have used 9.25 percent as the benchmark for short-term loans. This is the "Commercial Bank Lending Rate to Prime Borrowers" as reported in *World Financial Markets*. Since kontrollbank export financing is only available for use by exporters and the rates of interest charged are less than our benchmark, we determine that the provision of such financing constitutes a countervailable benefit.

The benefit provided under this program was determined by applying the interest rate differential between by applying the interest rate differential between the short-term benchmark and the interest rates paid by Voest-Alpine AG on the principal amount of all loans received by the company for the numbers of days the loans were outstanding. We then allocated the aggregate benefit over the value of exports of all products produced by Voest-Alpine AG. On this basis, we calculated an estimated net subsidy in the amount of .08 percent *ad valorem* for the products under investigation.

D. Kontrollbank Export Financing to an East German Company for U.S. Sales

Another financing scheme operated by the OKB provides for refinancing of short-term commercial bank loans granted to buyers of Austria's export products. In the past, the Department found that this type of financing, if preferential, confers a subsidy to the products under investigation when the recipient of the financing was a U.S. purchaser. See "Bars and Shapes from Mexico; Final Affirmative Countervailing Duty Determination and Countervailing Duty Orders" (49 FR 32887). In this instance, however, OKB export financing was used to partially finance sales of the products under investigation to an East German company (i.e., a company that is neither Austrian nor American owned). The East German company then sold these goods to a trading company with the knowledge that these goods eventually would be sold to the United States.

We learned the details of these circuitous sales to the United States when, at our request, counsel for the respondent submitted additional information on sales of the products under investigation through this East German company. During verification, we verified the total sales of the products under investigation to the East German company, as well as the fact that commercial banks had, indeed, provided loans to the East German company which were then refinanced by OKB. However, we were unable to obtain information on the amount of OKB refinancing of the products under investigation sold to the United States that the East German company received.

Since the interest rate charged on the short-term OKB loans was lower than the national average short-term interest rate in 1984 and since this preferential financing is limited to Austrian exports, we determine that the provision of such financing confers a countervailable benefit on the exports of the products under investigation that were eventually sold to the United States. The interest rate charged by the OKB was 8.5 percent for 85 percent of the sales and 8.75 percent for 15 percent of the sales. Using best information available, we have assumed that 85 percent of the sales from Voest-Alpine to the East Germany company benefitted from this financing. This is the maximum amount of export financing available to importers from the Kontrollbank. Because the borrowing is denominated in Austrian schillings, we have used 9.25 percent as our benchmark.

The benefit provided under this program was determined by applying the interest rate differential to the value of sales financed and allocating the benefit over the value of the sales to the East German company. On this basis, we calculated an estimated net subsidy of .61 percent *ad valorem*.

II. Programs Determined Not To Confer a Subsidy

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Austria of certain cabon steel products under the following programs:

A. Osterreichische Investitionskredit TOP-1 and TOP-2 Loans

The TOP-1 and TOP-2 loan programs are intended to further investments which are important for structural change by providing federal interest rate support for credits given by Austrian banks. These credits are refinanced on the Austrian capital market by the Investitionskredit AG. We verified that

loans were received by a range of sectors of the Austrian economy including electrical, chemical, metals, textiles, wood processing, ceramics, food, etc., and were primarily directed towards small- and medium-sized firms. Since these two TOP programs are neither limited to export promotion, nor to a specific industry or group of industries, we determine that the benefits from this program do not constitute a subsidy.

B. Labor Subsidies

1. Government-Funded Labor Training. Under the Labor Market Promotion Act, Law No. 31/1969, companies in Austria may receive funds from the Austrian government for the establishment of in-house training programs to improve worker skills or to teach workers new vocations. In addition, under this law, companies in Austria with low levels of capacity utilization may receive funds to be paid to the workers engaged in training in combination with reduced hours of work. Employees whose working hours are reduced receive support payments compensating them for the loss in earnings sustained. Workers receiving benefits under this program spend the difference between their reduced working hours and their normal working hours in training programs. We verified that funding for these labor training programs is available to all sectors of Austrian industry and not just to the iron and steel industry or to export-related industries. Because this program is not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that the program does not constitute a subsidy.

2. Special Assistance Act. The Special Assistance Act of 1973, Law No. 642/1973, provides enhanced unemployment benefits for former employees of sectors of the economy hit by the downturn which have been let go and are at least 55 years old for men or 50 years old for women. The Federal Minister of Social Affairs is empowered to determine by decree which sectors of the economy warrant application of the provisions of the law. In a decree issued on March 21, 1983, the iron and steel industry was included within the provisions of this law. We verified that payments under this law are made directly to the workers who have been laid off by an employer. The employer itself is not entitled to any support or subsidies under this law, and is not relieved from payment of any expenses or obligations which it would normally incur. Because this program provides assistance to workers and does not relieve Voest-Alpine AG of any expenses or obligations, we determine that the company does not receive any subsidy under this program.

C. Interest Subsidy Program—European Recovery Program (ERP) Loans

The government of Austria administered the European Recovery Program Fund of Austria from 1978–1981 to encourage the development of industrial projects. Under this program, qualifying investments were eligible for interest support, reducing the amount of interest payable on commercial loans obtained to finance such investments. All companies in Austria were eligible for this program and we verified it was used by a wide variety of industries. We also verified that this program was not confined to export-related projects. Because this program is not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that this program does not constitute a subsidy.

D. Loan Guaranty Program

Petitioner alleged that Voest-Alpine AG received loan guarantees from the Austrian government in 1981 and 1982. We verified that the only loan guarantees the Austrian government provided to Voest-Alpine AG were for loans issued by Austrian insurance companies pursuant to section 77 of the Insurance Supervisory Law of October 18, 1976, No. 5691/1978. This law requires insurance companies to secure their contingent liabilities by maintaining as security certain types of safe investments of the following classes: (1) High-grade loans and securities; (2) government-guaranteed securities; and (3) real estate. We also verified that Voest-Alpine has obtained a substantial amount of financing on an unguaranteed basis from ordinary commercial sources, and that the government guarantee of insurance company loans to Voest-Alpine AG enabled the insurance companies to find large-scale, legally eligible investments for placement of their investment portfolios. Accordingly, we determine that this program does not provide subsidies to Voest-Alpine AG.

III. Programs Determined Not To Be Used

We determine that manufacturers, producers or exporters in Austria of certain carbon steel products did not use the following programs:

A. Local Incentives

Petitioner alleged that Voest-Alpine AG may have received benefits from a number of local investment incentives that are available to industries in Austria. We verified that during the review period no local incentives were applicable to the production of the merchandise under investigation.

B. Income Tax Deferral on Export Sales

In a submission dated January 31, 1985, petitioner alleged that the Austrian government provides an export subsidy to exporters by permitting them to deduct 15 percent of receivables originating from exports from their taxable income. Our verification revealed that Voest-Alpine AG did not use this program during the review period.

Petitioner's Comments

Comment 1: Petitioner argues that in quantifying the subsidy from loss coverage/restructuring funds (i.e., grants) received by the Austrian steel producer, the benefit should be allocated to the year of receipt and not spread over 15 years because of the recurring nature of the Austrian government's grant program.

DOC Position: We disagree. The grants given to Voest-Alpine AG by the Austrian government are not recurring in nature, since the Austrian Parliament must provide separate legislative authority for each of these infusions. Hence, we have calculated the benefits provided by these grants according to our normal grant methodology.

Comment 2: Petitioner contends that under both the current ITA standard and a private lender standard, Voest-Alpine AG has been uncreditworthy since at least 1973.

DOC Position: Voest-Alpine AG has issued bonds to private investors and has also obtained substantial amounts of credit from Austrian and non-Austrian commercial banks from 1973 forward; on this basis, we consider it to be creditworthy.

Comment 3: Petitioner argues that absent future government support, Voest-Alpine would not have been able to obtain commercial loans comparable to those which it did obtain.

DOC Position: We consider this issue to be irrelevant since the Department, in determining the creditworthiness of a company, does not speculate on the possible impact of future government support. Instead it analyzes the company's operations at the point in time at which the debt was incurred.

Comment 4: Petitioner contends that government loan guarantees to Voest-Alpine AG benefit the company rather than insurance company lenders.

DOC Position: We disagree. As stated above, the Department has found Voest-Alpine AG to be creditworthy because it

received numerous commercial loans without any government guarantee. Lenders included many commercial banks, both Austrian and non-Austrian. Therefore, Voest-Alpine AG has been able to obtain financing from commercial sources. Furthermore, because government guarantees of insurance company loans are necessary to enable the insurance companies to find investments that would be legally eligible for the placement of their portfolios, these government loan guarantees do not bestow a countervailable benefit on Voest-Alpine AG.

Comment 5: Petitioner argues that implicit government loan guarantees which reduce a State firm's borrowing costs should be found to constitute countervailable subsidies. In support of this, petitioner argues that state firms benefit from implicit government loan guarantees that are substantively no different from explicit government loan guarantees, and that failure to consider implicit government loan guarantees causes the subsidy from explicit government loan guarantees and preferential government loans to be understated.

DOC Position: We disagree. Government ownership of a firm does not *per se* guarantee the payment of a state-owned firm's unguaranteed debt. Moreover, the implicit guarantee theory would result in double-counting in cases where we find explicit government loan guarantees to be countervailable.

Comment 6: Petitioner argues that should the Department need to estimate a discount rate, then the interest rate component should reflect Voest-Alpine AG's uncreditworthiness (i.e., the commerical interest rate plus a risk premium).

DOC Position: Since we have determined that Voest-Alpine AG is creditworthy, this issue is moot.

Comment 7: Petitioner argues that because the response stated that the TOP loan program "subsidizes investment projects" and that an important criterion for project selection is the "share of goods [to be] exported into developed countries" the TOP loans therefore constitute countervailable export subsidies.

DOC Position: We disagree. We verified that this program was available to, and used by, a wide variety of industries. Furthermore, while the export effect of a particular project is one criterion of the TOP–1 and TOP–2 programs, it is only one of many criteria. Other pertinent criteria in determining what investment projects are eligible for the TOP program include: self-financing power; relevance of the program in terms of structural policy, including demand trend, product characteristics, innovative merits, employment structure of the project; side effects of the project, including domestic competitors, infrastructure demands, pollution; chances of the projects' success, etc. For these reasons, we have determined that the TOP–1 and TOP–2 programs do not confer export subsidies.

Comment 8: Petitioner argues that government equity infusions into Voest-Alpine AG benefit the firm as a whole, regardless of their application and, therefore, equity infusions passed through Voest-Alpine AG to its subsidiary, VEW, are countervailable.

DOC Position: We disagree. The equity infusions which were made to VEW, were specifically tied by law to VEW, therefore, funds were not available for Voest-Alpine's general corporate purposes. VEW's financial statements, annual reports, etc., are not combined with those of Voest-Alpine AG. Moreover, the subsidy calculations do not include any benefits received by VEW, nor are VEW's sales or exports included in the denominators of the calculations. For these reasons, we determine that the equity infusions made to VEW do not confer countervailable subsidies to Voest-Alpine AG.

Comment 9: Petitioner argues that equity infusions into Voest-Alpine AG (including its two state-owned predecessors) should be investigated back to 1968 since they constitute countervailable benefits.

DOC Position: We disagree. The petition alleged that Voest-Alpine AG received massive government equity infusions since 1975. We initiated on this allegation. During our investigation, we examined Voest-Alpine AG's equityworthiness during the years 1971–1984. Based on this information, we determined that Voest-Alpine AG was equityworthy unitl 1978.

Comment 10: Petitioner argues that government subsidies should be excluded from Voest-Alpine AG's reported profits to determine the government's actual rate of return on its equity in the company for purposes of analyzing Voest-Alpine AG's equityworthiness and for determining the net subsidy received by the company.

DOC Position: The Department, for purposes of analyzing the company's operations for the equityworthy determination and for determining the net subsidy received by the company, uses the rate of return from its business activity based on acceptable accounting principles.

In this case, the net profit/loss of VA included funds received as the principal amounts from borrowings and certain appropriations to and from reserve accounts. Since there amounts did not result from operations, the rate of return used by the Department to analyze the company and calculate the net subsidy did not include these amounts. In determining the equityworthiness of the company, the Department analyzes the operations of the company without considering the sources of the funds received. Funds received through other government programs, debt or equity may have been made in accordance with commercial considerations. If the Department concludes that such funds were not provided in accordance with commercial considerations, these are then countervailed under the other program.

Respondent Voest-Alpine AG's Comments

Comment 1: Respondent contends that the weighted cost of capital (discount rate) used in the grant calculations should take into account the floating interest rates on Voest-Alpine AG's long-term loans.

DOC Position: We agree. However, at the time of the preliminary determination we were unaware that these long-term loans had floating interest rates. In these final determinations, Voest-Alpine AG's verified long-term floating interest rates were used to calculate the weighted cost of capital.

Comment 2: Respondent argues that the 9.25 benchmark interest rate for short-term loans is too high and that information published by a U.S. bank with respect to interest rates prevailing in a foreign country does not constitute best available information, when other more reliable information has been provided and verified. Respondent also argues that information from Voest-Alpine AG, and from Austrian banks, concerning their 1984 bill of exchange and short-term loans' discount rates would be more appropriate "best information available" than information published in the U.S. by a U.S. bank regarding a type of financing that is not comparable to bill of exchange financing.

DOC Position: We disagree. There are no published short-term interest rates in Austria. Since we were unable to verify the short-term interest rates which the Austrian banks provided, we cannot consider these interest rates to be the best information available. Although respondent provided information that bills of exchange are an instrument of

short-term financing in Austria, no information was provided about the percentage of short-term financing that bills of exchange constitute. The information provided by respondents indicated that bills of exchange are not the predominant form of short-term financing in Austria and, therefore, they are not representative of the national average short-term interest rate.

Comment 3: Respondent contends that export financing given to a third country company (i.e. neither a U.S. nor Austrian company) by the OKB should not be regarded as a subsidy, since Voest-Alpine AG was not a recipient of any of the export financing.

DOC Position: We disagree. We assume that Voest-Alpine AG sold the East German company the merchandise under investigation for commercial purposes. And as we discussed above, a subsidy was bestowed on the goods which were eventually imported into the United States. Therefore, preferential loans provided to the East German purchaser by the Austrian government benefitted the goods exported to the United States.

Comment 4: Respondent contends that the Austrian export credit programs are not countervailable because they conform to OECD rules governing export credit programs and are, therefore, permissible under paragraph k of the "Illustrative List of Export Subsidies" which is annexed to the GATT Subsidy Code.

DOC Position: We disagree. The OECD rules governing such programs are only applicable to export credits of more than 2 years. The loans in question, however, have a duration of only 18 months and are therefore not subject to OECD's export credit regulations. Thus, we do not believe that the portion of paragraph k cited by respondent is relevant with respect to the loans in questions.

Comment 5: Respondent argues that OKB credits to a third country company are not made at subsidized rates since OECD found that the rates charged on its credits are "sufficient to earn a positive spread over OKB's cost of funds," and since these rates were at, or above, the prevailing rates in Austria for comparable types of loans.

DOC Position: We disagree. The OKB loans were not at, or above, the prevailing rates in Austria for comparable types of loans. Whether or not OKB's credits are sufficient to earn a positive spread over its cost of funds is irrelevant to our analysis.

Comment 6: Respondent argues that the grants and equity infusions received by Voest-Alpine AG could constitute a subsidy only with respect to the "manufacture, production or exportation" of the goods under investigation, and that because these funds were not used for the manufacture, production or exportation of these goods, ITA should not be countervail them.

DOC Position: We disagree. All equity infusions made to Voest-Alpine AG as of 1978, when it was deemed unequityworthy, are countervailable regardless of whether these infusions only benefit certain Voest-Alpine plants, since they were available to Voest-Alpine AG to utilize as it wished.

Comment 7: Respondent argues that the OKB rates for short-term loans are higher than its medium-term rates, which are in accord with OECD rules; and since, short-term interest rates are generally lower than longer term interest rates, the rates applicable to OKB's short-term financing are also in accord with the applicable international rules. The Department should conclude, therefore, that these rates are not preferential.

DOC Position: The fact that some of OKB's short-term rates are higher than some of its medium-term rates, which conform to OECD rules and/or other international rules, is irrelevant to our investigation. In determining whether loan rates given by central or state-owned banks are preferential, it is our policy to use a national average commercial interest rate as a benchmark, if the loan program is a broad, national lending program. In this case, we are using an average commercial rate in *World Financial Markets* which is published by Morgan Guarantee Trust and Co. as best information available.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determinations. Commerce officials spent from March 24–29, 1985, and from June 11–14, 1985, verifying the information submitted by the government of Austria and Voest-Alpine AG, and gathering additional information to be used in these determinations. During these verifications, we followed normal verification procedures including the inspection of documents and ledgers, and the tracing of information in the response to source documents, accounting ledgers and financial statements.

Administrative Procedures

We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35). A public hearing was not requested. In accordance with the Department's regulations (19 CFR 355.34(a)), written views have been received and considered in this determination.

Suspension of Liquidation

In accordance with our preliminary countervailing duty determinations published on March 20, 1985, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to collect the estimated net subsidy. The countervailing duty final determinations were extended to coincide with the antidumping final determinations on the same products, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Tariff Act). However, we cannot impose the suspension of liquidation of the subject merchandise for more than 120 days without the issuance of a final determination. Therefore, on July 17, 1985, we instructed the U.S. Customs Service to terminate the suspension of liquidation on the subject merchandise entered on or after July 19, 1985, under the preliminary countervailing duty determinations. On July 19, 1985, United States Steel Corporation, petitioner in this case, obtained a temporary restraining order from the Court of International Trade enjoining the U.S. Department of Commerce and the U.S. Customs Service from terminating the suspension of liquidation in the countervailing duty investigations of certain carbon steel products from Austria. On July 25, 1985, the Court of International Trade lifted the July 19, 1985, temporary restraining order; therefore, we instructed the U.S. Customs Service to terminate the suspension of liquidation on the subject merchandise entered on or after July 26, 1985 under the preliminary countervailing duty determinations.

We will instruct the U.S. Customs Service to continue the suspension of liquidation of all entries, or withdrawal from warehouse, for consumption of the subject merchandise entered between March 20, 1985 and July 26, 1985. This suspension of liquidation does not apply to entries of the subject merchandise entered on or after July 26, 1985, and the final ITC determinations.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to these investigations. 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 written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry 45 days after the publication of this notice.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited, or securities posted, as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue countervailing duty orders, directing Customs officers to assess countervailing duties on certain carbon steel products from Austria entered, or withdrawn from warehouse, for consumption as described in the "Suspension of Liquidation" section, equal to the estimated net subsidy amount of 2.27 percent.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Theodore W. Wu,

Acting Assistant Secretary for Trade Administration.

August 12, 1985.

Appendix—Description of Products, Austria

1. The term "*hot-rolled carbon steel flat-rolled products*" covers hot-rolled carbon steel products, whether or not corrugated, or crimped; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width and pickled, as currently provided for in item 607.8320 of the *TSUSA*; and not pickled and in coils; as currently provided in item 607.6610, or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*.

2. The term "*cold-rolled carbon steel flat-rolled products*" covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, nor pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width and 0.1875 or more in thickness, as currently provided for in item 607.8320 of the *TSUSA*; or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

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[C-401-401]

Final Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products From Sweden

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Sweden of certain carbon steel products. The estimated net subsidy is 8.77 percent *ad valorem* for all manufacturers, producers, or exporters in Sweden of certain carbon steel products, except for Surahammars Bruks AB which is excluded from these determinations. We have notified the United States International Trade Commission (ITC) of our determinations.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Jack Davies, Roy Malmrose, or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-1785, 377-8320, or 377-3464.

SUPPLEMENTARY INFORMATION:

Final Determinations

Based upon our investigations, we determine that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Sweden of certain carbon steel products. For purposes of these investigations, the following programs have been found to confer subsidies:

- Regional Development Incentives;
- National Government Loans and Grants;
- Government Funds for Loss Coverage;
- Government Equity Infusions;
- Government Equity Guarantees;
- Government Acquisition of Assets for SSAB;
- Employment Promotion Grants; and
- Government Research and Development Grants to SSAB.

We determine the estimated net subsidy to be 8.77 percent *ad valorem* for all manufacturers, producers, or exporters in Sweden of certain carbon steel products, except for Surahammars Bruks AB which is excluded.

Case History

On December 19, 1984, we received a petition from the United States Steel Corporation of Pittsburgh, Pennsylvania, filed on behalf of the U.S. industry producing certain carbon steel products. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Sweden of certain carbon steel products directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate countervailing investigations, and on January 8, 1985, we initiated such investigations (50 FR 2319). We stated that we expected to issue preliminary determinations by March 14, 1985. On January 25, 1985, counsel for Surahammars Bruks AB requested that the company be excluded from any countervailing duty order pursuant to 19 CFR 355.38.

Since Sweden is a "country under the Agreement" within the meaning of section 701(b) of the Act, injury determinations are required for these investigations. Therefore, we notified the ITC of our initiation. On February 4, 1985, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of carbon steel plate, hot-rolled carbon steel flat-rolled products, and cold-rolled carbon steel flat-rolled products from Sweden (50 FR 6070).

We presented a questionnaire concerning the allegations to the government of Sweden in Washington, D.C. on January 25, 1985. A supplemental questionnaire was presented on February 12, 1985. The government of Sweden, Svenskt Staal AB (SSAB), and Surahammars Bruks AB (Surahammars), the two Swedish producers and exporters of the products under investigation, provided responses to our questionnaire on February 25, 1985. We also received information pertaining to our questionnaire from Granges AB on February 19, 1985, and

from Luossavaara-Kiirunavaara AB (LKAB) on March 6, 1985. On the basis of the information contained in these responses, we made preliminary determinations on March 14, 1985 (50 FR 11224). We verified the responses of the government of Sweden, SSAB, Surahammars, and LKAB from March 25–April 4, 1985.

On March 21, 1985, the United States Steel Corporation filed a request for extension of the deadline date for these final determinations to correspond with the date of the final determinations in the antidumping investigations of the same products from Austria. Pursuant to section 705(a)(1) of the Act, as amended by section 606 of the Trade and Tariff Act of 1984, the Department granted an extension of the aforementioned deadline to August 12, 1985, the deadline for the final determinations in the antidumping investigations.

Scope of Investigations

The products covered by these investigations are certain carbon steel products, which comprise

- Carbon steel plate;
- Hot-rolled carbon steel flat-rolled products; and
- Cold-rolled carbon steel flat-rolled products.

These products are more fully described in the Appendix to this notice.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigations. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the Federal Register (49 FR 18006).

The two producers and exporters of the products under investigation are SSAB and Surahammars. For purposes of these determinations, the period for which we are measuring subsidization ("the review period") is calendar year 1984.

Based upon our analysis of the petition, the responses submitted by the government of Sweden, SSAB, Surahammars, and LKAB to our questionnaire, our verification, and comments submitted by interested parties, we determine the following:

I. Programs Determined To Confer Countervailable Benefits

We determine that subsidies are being provided to manufacturers, producers, or exporters in Sweden of certain carbon steel products under the following programs:

A. Regional Development Incentives

Petitioner alleged that the Swedish carbon steel producers have received various regional development incentives from the Swedish government.

We verified that SSAB has received regional development loans and grants from the government for location of industry, freight relief, regional investment projects, health care facilities, building and construction, various employment schemes, and labor training programs. We determine that all of the above programs are countervailable except for the employment and training programs, which we found to be not limited to a particular region or to a specific enterprise or industry or group of enterprises or industries.

For non-recurring grants, we evaluated the benefits using the grant methodology, and allocated the subsidy over 15 years (the average useful life of renewable physical assets for the steel sector). For the recurring benefits under the freight relief program, we considered the amount received during the review period only. Finally, for the location of industry loan, we calculated the benefits using the long-term loan methodology. We divided the sum of these benefits by total sales for the review period to arrive at an estimated net subsidy of 0.26 percent ad valorem.

B. National Government Loans and Grants

Petitioner alleged that the Swedish carbon steel producers have received preferential loans and grants from the government as part of a broad program for restructuring the Swedish steel industry.

We verified that SSAB received reconstruction loans and structural loans from the Swedish government. Both types of long-term loans initially were given to SSAB as part of the Swedish government's participation in the establishment of SSAB in 1978. Additional reconstruction and structural loans were awarded to SSAB by the government in later years.

The initial reconstruction loans received by SSAB in 1978 were intended to cover expected operating losses by SSAB during the 1978–1982 restructuring period and are discussed below in section I.C. Subsequent reconstruction loans were granted for employment promotion purposes and for investment in plant and equipment. These loans were interest-free for the first three years, after which they carried an interest rate of either 9.5 percent or 11.5 percent. Any accrued interest not paid in a given year is added to the loan principal at the end of the fiscal year. Up to half of the funds received may be written off at the end of the second fiscal year after initial disbursement, and the remainder of the unpaid principal may be forgiven entirely at the end of the ninth fiscal year after disbursement. Furthermore, principal and interest payments on these loans are required only if SSAB decides to distribute dividends to its shareholders. In each year dividend payments are made, SSAB is obligated to make a payment to the government on these loans in an amount equal to the dividends paid.

The structural loans received by SSAB were intended to finance a portion of designated investment projects. These loans were interest-free for the first three years, after which they carried an interest rate based on the prevailing state loan interest rate plus a 0.25 percent margin. The interest rate, which is adjusted every fifth year, initially was 5.25 percent and currently is 12.50 percent, including the 0.25 percent margin. The term of these loans is 25 years after disbursement. A portion of the initial set of structural loans was converted by the government in 1981 to new equity in SSAB (see section I.D. below).

Since all of the these loans were authorized under special government legislation and were given to SSAB on terms inconsistent with commercial considerations, we determine that the reconstruction and structural loans provide countervailable benefits to SSAB.

Petitioner alleged that SSAB has been uncreditworthy since its formation in 1978. To determine if SSAB was creditworthly during the 1978–1984 period, we focused on the ability of the company to meet its interest obligations. In addition, an important measure of creditworthiness is whether private lenders are lending the company significant amounts of funds free from any government involvement. Our examination of these factors leads us to conclude that SSAB has been and continues to be creditworthy.

We calculated the benefits conferred by these loans in accordance with our long-term loan methodology as contained in the Subsidies Appendix. For the benchmark interest rate on variable-rate loans, we used the prevailing short-term interest rate charged by commercial banks on checking accounts, as published in the *"Allman Manadasstatistik 1985:6."* To calculate the *ad valorem* benefit

conferred by these loans, we divided the sum of all 1984 loan benefits, less interest repaid in 1984, by the total value of SSAB's 1984 sales.

We treated those portions of the reconstruction loans which were written off prior to 1985 as grants. In accordance with the grant methodology in the Subsidies Appendix, we allocated the amount of the loan principal forgiven (the grant amount) over 15 years using the weighted-average cost of capital in the year when the terms of the original loan were agreed upon. To calculate the *ad valorem* benefit conferred by these grants, we divided the sum of all 1984 grant benefits by the total value of SSAB's 1984 sales.

The estimated net subsidy rate for the loan and grant benefits derived from SSAB's reconstruction and structural loans is 1.84 percent *ad valorem*.

C. Government Funds for Loss Coverage

In 1978 the Swedish government provided funds to SSAB to cover operating losses projected by SSAB to occur during the 1978–1982 startup period. Under Government Bill 1977/78:87, funds for loss coverage were authorized in the form of conditional reconstruction loans. Because they are recorded as contingent liabilities rather than ordinary debt and because they are considered to be an offset to the par value of the equity shares owned by SSAB's investors, the loss coverage reconstruction loans have characteristics common to both equity and debt.

Since these loss coverage reconstruction loans were authorized under special government legislation and were given to SSAB on terms inconsistent with commercial considerations, we determine that these loss coverage funds provide countervailable benefits to SSAB.

These loss coverage reconstruction loans contained essentially the same terms and repayment conditions as the reconstruction loans discussed in section I.B. above. A total of 1,800 million Swedish kronor (MSEK) was drawn down by SSAB during the 1978–1984 period. After a three year grace period, interest on each drawdown accrues at a rate of 9.5 percent, and any accrued interest not paid by the end of the fiscal year is added to the drawdown amount. According to the repayment terms, one-half of the amount of each drawdown may be forgiven by the government at the end of the second fiscal year after disbursement. At the end of the ninth fiscal year, the government has the option to demand total or partial repayment of the principal and accumulated interest or to forgive the entire amount.

We verified that one-half of the amount drawn down on these loss coverage loans was forgiven by the Swedish government two years after each drawdown. We also verified that during 1984 a payment was made on the first drawdown amounting to 25 MSEK, equal to the amount of dividends approved by the shareholders for fiscal year 1983. To calculate the benefits attributable to both the loan write-off and the remaining loan principal, we divided the sum of all 1984 loan and grant benefits, less dividends repaid in 1984, by the total value of SSAB's 1984 sales. The estimated net subsidy rate for the loss coverage funds is 2.21 percent *ad valorem*.

D. Government Equity Infusions

Petitioner alleged that, since its formation in 1978, SSAB has received mass government equity infusions on terms inconsistent with commercial considerations.

We have consistently held that government provision of equity does not *per se* confer a subsidy. Government equity infusions bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether the company is a reasonable commercial investment. Since SSAB's shares are not publicly traded, and there is no market-determined price for its shares, we must determine whether SSAB is equityworthy.

Two equity infusions were made by the government of Sweden. The first was made in 1978, at the time of formation of SSAB, and the second in 1981. In making our determination we analyzed each infusion separately from the viewpoint of an informed investor using data which were available at the time.

In analyzing the initial investment, we considered the financial results of the three primary producers and investors in SSAB, Norrbottens Jarnverk AB (NJA), Granges AB, and Stora Kopparbergs Bergslag AB (Stora), for the years, 1975 through 1977; the report commissioned by the government entitled "The Commercial Grade Steel Industry on the Eve of the Eighties"; and the investment plans and financial forecasts prepared for SSAB for the period 1978 through 1982.

Based on the facts available to an investor at the time the equity investment was made concerning: (1) The anticipated rate of return on equity, (2) the extended length of time before the company was projected to become profitable, (3) the prospects of the world steel industry, (4) the expected demand in Sweden and export markets, (5) the amount of capital and loss coverage investment required by SSAB, and (6) the cost structure of the company, the Department concluded that the equity investment was not made in accordance with commercial considerations.

When the second equity investment was made, both the experience in the steel industry and knowledge of the prospects of SSAB indicated that a reasonable return could not be expected on any new equity investment in SSAB. Additionally, we considered the action of the two private investors in SSAB, Stora and Granges. Stora chose to forgo its entire investment in SSAB rather than invest an additional 375 MSEK in new capital. Granges only agreed to invest after the government guaranteed the new investment and a rate of return on the new investment (see section I.E. below). The actions of the two private investors confirmed that private investors did not consider the company equityworthy. Therefore, we conclude that SSAB has been unequityworthy since its inception.

We verified that SSAB received two government equity infusions in 1978 and 1981. The 1978 government equity infusion was part of SSAB's 1978 formation agreement. Under the terms of the formation agreement, Granges, Stora, and NJA, a government-owned entity each transferred its steel assets to SSAB in exchange for 25 percent shares of SSAB. As part of the formation agreement, the government also contributed 700 MSEK in cash in exchange for a 25 percent share of SSAB. At the time of the formation of SSAB, the government also agreed to pay NJA 530 MSEK to fund the difference between the book value and the sale value of the assets sold to SSAB (see section I.F. below) and to provide 343.3 MSEK in funds to SSAB to purchase from Granges a railroad used to transport iron ore and steel (see section I.F. below).

Because the assets transferred by the two privately-owned steel companies to SSAB were part of a negotiated agreement, we consider the transfer value of the assets to represent a fair, negotiated, arms-length value. Thus, we determine that SSAB did not receive any countervailable benefits from the transfer of steel assets from the two private steel companies in exchange for 25 percent of the shares of SSAB. However, because the 700 MSEK in government funds and the 700 MSEK in assets contributed by a government-

owned entity, namely NJA, were given to an unequityworthy company, we determine that the funds and transferred assets constitute equity infusions inconsistent with commercial considerations and are therefore countervailable.

In 1981, SSAB required additional capital from its shareholders. As a result of the need for additional capital, Stora decided to relinquish its ownership in SSAB which was then absorbed by the government. The government contributed 575 MSEK in cash and coverted 550 MSEK in structural loans from debt to equity. Granges contributed 375 MSEK to maintain its proportional share as a 25 percent shareholder in SSAB (see section I.E. below) and provided a 150 MSEK debenture loan (see section II.B. below). Because the government contributed a total of 1125 MSEK in equity in 1981 to an unequityworthy company, we determine that the funds constitute an equity infusion inconsistent with commercial considerations.

Using the equity methodology in the Subsidies Appendix, we calculated the total 1984 benefits by multiplying the amount of equity received within 15 years of the 1984 review period by the 1984 rate of return shortfall in 1984, which is the difference between the national average rate of return on equity (23.3 percent) and SSAB's actual rate of return on equity (6.8 percent). We subtracted the amount of dividends paid to the government in 1984 from the total benefit and divided the result by SSAB's total sales for 1984 to arrive at an estimated net subsidy from government equity infusions of 3.33 percent *ad valorem*.

E. Government Equity Guarantees

As discussed above, in 1981 Granges contributed 375 MSEK in equity to SSAB. In a government bill passed prior to the 375 MSEK equity contribution, the government agreed to pay Granges 875 MSEK for its shares in SSAB in 1991, if Granges decides to sell its shares at that time. This agreement by the government, in essence, guarantees Granges an annual rate of return of approximately 9.5% on its 375 MSEK contribution. Although the funds provided to SSAB by Granges are ostensibly equity, equity infusions do not generally carry a specified rate of return. Therefore, we believe it is more appropriate to treat these funds as a long-term loan. We determine that the government's guarantee of an implicit rate of return bestows a countervailable benefit upon SSAB.

To calculate the benefits from the equity guarantee, we used the long-term methodology to compare the cash flow differences between a zero interest rate loan having a baloon payment of 875 MSEK in 1991 to a loan having annual principal repayments during the 1982–1991 period with a commercial interest rate of 14.15 percent. We calculated an estimated net subsidy from the equity guarantee of 0.24 percent *ad valorem*.

F. Government Acquisition of Assets for SSAB

As part of the formation agreement, SSAB purchased a railroad from Granges for 343.3 MSEK, the funds for which were provided by the government. We verified that the funds were received by SSAB as a grant. The payment to Granges was made in the form of a 14-year note issued by the National Debt Office with an interest rate of 8.25 percent.

The railroad was an intergral part of the steel production facilities and was used to transport both raw materials and finished products. From 1978 through 1981 SSAB invested approximately 53.2 million in capital improvements in the railroad.

Under another part of the formation agreement, the Swedish Government trasferred assest from NJA, a government-owned entity, to SSAB. In return, NJA received stock from SSAB valued at 700 MSEK and cash of 530 MSEK for a total of 1,230 MSEK in value. We determine that that portion of NJA's assets which were exchanged for stock in SSAB is a countervailable equity infusion inconsistent with commercial considerations (see section I.D). We also determine that the remaining 530 MSEK, which was contributed by the government in order to effect this transfer, confers a countervailable benefit to SSAB. For purposes of valuing this benefit, we have treated the 530 MSEK as a grant.

Since SSAB used government funds to acquire assets used in its steel making operations, we determine that these government funds provided a countervailable benefit to SSAB. Using the grant methodology, we allocated the grant amounts over 15 years using the 1978 weighted-average cost of capital for SSAB as the discount rate. The estimated net subsidy is 0.84 percent *ad valorem*.

G. Employment Promotion Grants

We found at verification that both SSAB and Surahammars had received benefits under a special 1978–1979 government employment support program available only to the steel industry.

In response to the general economic recession in Sweden, the Swedish Parliament had passed Government Bill 1976/77:95 in March 1977 under which employment grants were paid to companies recognized as being the dominant employers in a particular community. In order to prevent layoffs, these grants were designed to cover 75 percent of the wages and salaries of surplus workers who performed work at the company unrelated to normal production activities. These benefits were available to all types of businesses throughout Sweden until June 1978.

In November 1977, the Swedish Parliament extended these benefits for an additional year to the steel industry under Government Bill 1977/78:59. Since these employment promotion grants were available only to the steel industry for the period July 1978 through June 1979, we determine that these benefits conferred a countervailable subsidy to SSAB and Surahammars.

To calculate the subsidy derived from these non-recurrent special employment grants, we applied the grant methodology to the amount of special employment grants received under the steel employment promotion program. The estimated net subsidy rate if 0.04 percent *ad valorem* for SSAB and 0.06 percent *ad valorem* for Surahammars.

H. Research and Development Grants to SSAB

At verification we discovered that the Swedish Board for Technical Development (STU) provides direct funding to Swedish industries for research and development purposes. Repayment of the monies given is conditional upon the success of the funded project. The results obtained from direct funding of individual corporate research and development projects are not publicly available.

We verified that SSAB, but not Surahammars, received direct government funding for research and development projects. We also verified that except for one government loan to buy equipment for a research and development project, SSAB was not repaying the government funds provided due to the present uncertainty of the successfulness of the projects funded.

While the type of research and development grants received by SSAB are not *de jure* limited to a specific enterprise or industry or group of enterprises or industries, we have no information that, *de facto*, these grants were not limited to a specific enterprise or industry or group of enterprises or industries. Moreover, the results of government funded corporate research and development projects are not publicly available. Therefore, we

determine the research and development funds provided to SSAB are countervailable.

We used the grant and long-term loan methodologies, as appropriate, to calculate the benefits conferred on SSAB by these research and development funds. The estimated net subsidy is 0.01 percent *ad valorem*.

II. Programs Determined Not To Be Countervailable

We determine that countervailable subsidies are not being provided to manufacturers, producers, or exporters in Sweden of certain carbon steel products under the following programs.

A. Iron Ore Inputs at Preferential Prices

Petitioner alleged that SSAB has an arrangement with LKAB, a state-owned mining company in Sweden, under which SSAB obtains iron ore at preferential prices.

In its response, SSAB reported that it obtains all of its external iron ore supplies from LKAB. At verification, we found that the three year contract between LKAB and SSAB provided for the annual negotiation of iron ore prices. Although SSAB and LKAB are both majority-owned by the government of Sweden, the iron ore price negotiations are carried on under arms-length conditions, with no government involvement. Based on information supplied at verification, we found that the 1983 and 1984 negotiated prices on LKAB iron ore sales to SSAB were at or above comparable prices charged by LKAB to its other iron ore customers.

During 1983 and 1984, SSAB received price rebates from LKAB to promote the increased utilization of iron ore pellets. At verification, LKAB officials explained that the iron ore pellet rebates were designed by LKAB to encourage its customers to convert to a new technology which allows greater use of iron ore pellets in raw steel production. We found that other iron ore pellet customers of LKAB received iron ore pellet rebates comparable to those received by SSAB. Furthermore, since SSAB has adopted the new iron ore pellet technology, LKAB is phasing-out the iron ore pellet rebates to SSAB during 1985–1986.

We determine, therefore, that SSAB is not receiving countervailable benefits resulting from the prices paid by SSAB to LKAB on iron ore pellets used as inputs in the production of carbon steel.

B. Government Loan Guarantees

Petitioner alleged that SSAB benefitted from loan guarantees provided by the Swedish government.

We verified that the only loan guarantee received by SSAB consisted of the government guarantee on the loan given by Granges to SSAB. In the government bill which provided for the equity guarantee to Granges (see section I.E. above), the Swedish government also agreed to guarantee a loan by Granges to SSAB. To determine whether the guarantee provides a countervailable benefit to SSAB, we first look to the cost of commercial guarantees. Where, as here, no comparable commercial guarantees exist, we look next to see if the government loan guarantee has effected the interest rate charged on that loan. We have compared the interest rate charged on the guaranteed loan with the company specific benchmark rate and have found that the rate on the guaranteed loan exceeds that on the benchmark. In addition, we verified that the Granges loan to SSAB is being fully repaid by SSAB. For these reasons, we find the government loan guarantee not to be countervailable.

C. Government Funds to Research and Development Organizations

Petitioner alleged that the Swedish government helps support steel-oriented research and development organizations in Sweden.

The Swedish Ironmasters' Association, or Jernkontoret, participates in joint research activities with practically all iron and steel companies in Sweden, Finland, Norway, and Denmark. Research activities are financed in three ways: special research levies from enterprises, government grants from STU, and contributions in kind from the industrial companies.

The Swedish Institute for Metals Research is sponsored by nearly all the Scandinavian steel industries. The financial and organizational basis for the activities at the Institute is a triennial agreement between private industry and STU. This agreement sets out the details of a general research program. Under the current agreement, the industry contributed 53 percent and the government 47 percent of the cost.

The Foundation for Metallurgical Research (MEFOS) owns and operates two experimental plants called the Metallurgical Research Plant and the Metal Working Research Plant. Approximately 60 percent of the Foundation's budget is provided by Foundation members and 40 percent is contributed by the government through STU.

We verified that STU provides research and development funds for a broad range of industries throughout the Swedish economy. Furthermore, the research and development results obtained through partial government funding of the organizations described above are publicly available. Therefore, we determine that the government funds provided to the metallurgical research and development organizations in Sweden are not countervailable.

III. Programs Determined Not To Be Used

We verified that the following programs were not used by the respondents.

A. Government Export Credits

Petitioner alleged that the Swedish government provides export credits to the Swedish steel industry.

Export credits in Sweden are provided by the Swedish Export Credit Corporation, which is owned 50 percent by the Swedish government and 50 percent by Swedish banks. We verified that neither SSAB nor Surahammars received subsidized export credits for U.S. exports of the products under investigation. Therefore, we determine that no countervailable benefits were provided to SSAB or Surahammars in the form of subsidized export credits.

B. Municipal and County Subsidies

Petitioner alleged that the Swedish steel industry receives subsidies from municipal and county governments.

The regional and municipal governments in Sweden are extensions of the national government. Industrial development programs are authorized and funded in Sweden by the Swedish national government. The programs authorized and funded by the national government have been analyzed above. Furthermore, at verification we found no evidence that either SSAB or Surahammars had used or received any benefits from municipal and county governments.

C. Government Restructuring Program for the Specialty Steel Industry

Petitioner alleged that Surahammars was involved in a 460 MSEK program to restructure the Swedish specialty steel company.

The restructuring program alleged by the petitioner involved the stainless steel industry. We verified that Surahammars does not produce stainless steel. Therefore, we determine that Surahammars did not benefit under the alleged restructuring program.

Petitioner's Comments

Comment 1: Petitioner argues that SSAB has been unequityworthy from its inception.

DOC Position: We agree. See our discussion in section I.D. above.

Comment 2: Petitioner argues that government subsidies should be excluded from SSAB's reported profits to determine the government's actual rate of return on its equity in SSAB for purposes of analyzing the company's equityworthiness and for determining the net subsidy received by the company.

DOC Position: The Department, in analyzing the company's operations for the equityworthy determination and in determining the net subsidy received by the company, uses the rate of return from its business activities based on accepted accounting principles. In this case, the net profit/loss recorded by SSAB included funds received as the principal amounts from borrowings and certain appropriations to and from reserve accounts. Since these amounts did not result from operations, the rate of return used by the Department to analyze the company and calculate the net subsidy did not include these amounts.

In determining the equityworthiness of the company, the Department analyzes the operations of the company as a private investor would at the time the investment was made without considering the sources of the funds received. Funds received through other government programs, debt or equity, may have been made in accordance with commercial considerations. If the Department concludes that such funds were not provided in accordance with commercial considerations, these are then countervailed separately.

Furthermore, we use the actual experience of the company as presented by generally accepted accounting principles in the country in which the company is located for determining the equityworthiness of the company. This provides a consistent standard for comparison to other companies which are conducting business in that country.

Finally, we already account for subsidies, other than equity, which the company received from the government by using methodologies specifically designed by the Department to calculate the benefit from these subsidies. If we countervailed these subsidies again when measuring the benefits to the company from an equity investment by the government, we would be double counting.

Comment 3: Petitioner contends that for purposes of quantifying the countervailable benefit, conditional reconstruction loans should be treated as grants, with future repayments being subtracted from the quantity of funds considered as the grant amount.

DOC Position: As noted in section I.C. above, we treated the forgiven amounts of the loans as grants, which we allocated over time. We then treated the funds which were not written-off as one year loans, rolled-over in subsequent years. This permits us to take into account the yearly changes in principal amounts due to capitalization of accrued interest payments and/or to any repayments of principal or interest actually made. The 1984 loan benefits were calculated by applying the 1984 short-term interest rate to the one year portion of the 1984 loan balance outstanding and then subtracting loan repayments made in 1984.

Comment 4: Petitioner argues that based on SSAB's financial ratios of times interest earned and debt coverage, and on SSAB's inability, without government support, to obtain commercial loans comparable to those received from the government, SSAB has been uncreditworthy from inception. Therefore, a risk premium should be added to the benchmark used in the Department's loan methodology.

DOC Position: We disagree. During 1979, 1980, 1982 and 1983, SSAB borrowed a total of 800 MSEK through commercial bonds at market interest rates. The bonds are held by private investors and are not guaranteed by the government of Sweden.

The Department uses as its primary criteria the private market place for determining the creditworthiness of a company. Given the significant amount of private borrowings by SSAB, the Department determined it to be creditworthy.

Comment 5: Petitioner argues that relief from standard borrowing costs (i.e., front and fees, stamp duties, and redemption commission) provides a countervailable benefit to SSAB.

DOC Position: In calculating the benefit to SSAB from preferential long-term loans, we have used as our benchmark the interest rate charged to SSAB on its comparable commercial long-term loans. To the extent that SSAB was required to pay associated loan charges or fees for the comparable commercial loans, these have been included in the benchmark interest rate. Therefore, the benefit accruing to SSAB as a result of its exemption from any additional charges on its preferential loans, would already be captured in the interest rate differential, and no additional calculations need be made.

For those subsidy programs in which we have applied our short-term loan methodology, we have used a national average short-term commercial borrowing rate of 16.08 percent as our benchmark. To this rate we added an additional fee of 0.72 percent which represents the national average fee paid on overdraft facilities. In this instance, we believe it is appropriate to include this fee in our benchmark, since the interest rate on comparable commercial loans would be fee-inclusive.

Comment 6: Petitioner contends that because SSAB is a state-owned company, it has benefitted from both explicit and implicit government loan guarantees. Petitioner argues that if SSAB, as a state-owned firm, incurs lower interest costs then private firms with similar creditworthiness, government loan guarantees—explicit or implicit—provide countervailable benefits. Petitioner further contends that failure to consider implicit government loan guarantees causes the subsidy from explicit government loan guarantees and preferential government loans to be understated.

DOC Position: With respect to explicit loan guarantees provided by the government, we have used the methodology outlined in the Subsidies Appendix to determine if such guarantees provide a countervailable benefit to SSAB.

We disagree, however, with petitioner's contention that implicit government loan guarantees provide a countervailable benefit, and that failure to consider such guarantees causes benefits from other loan programs to be understated. Government ownership of a firm *per se* does not guarantee payment of unguaranteed debt by a state-owned firm. Moreover, we do not consider any secondary effects that government ownership of, or debt and equity participation in, a firm might have, such as any signals perceived by private lenders when they make commercial investment decisions. In addition, taking into account the effect an implicit guarantee might have on interest rates would result in double-counting in cases where we find explicit government loan guarantees to be countervailable.

Comment 7: Petitioner argues that the 530 MSEK grant given by the government to NJA to cover the losses NJA sustained in selling its assets to SSAB is countervailable. Petitioner maintains that the 530 MSEK was part of the purchase price the government paid for the assets of SSAB and as such, is countervailable.

DOC Position: We agree. See our discussion in section I.E. above.

Comment 8: Petitioner contends that the purchase of the railroad from Granges for 343.3 MSEK, the funds for which were given to SSAB by the government, was part of the price

Granges charged SSAB for acquisition of Granges' steel assets. Petitioner argues that because the government funds covered a part of the cost of obtaining Granges' steel assets for SSAB, those funds are countervailable.

DOC Position: We agree that the acquisition of the railroad from Granges provided a countervailable benefit to SSAB. However, we do not agree with petitioner that the benefit occurs because the funds provided for the railroad paid part of the acquisition cost of obtaining Granges' steel assets. We believe that the benefit bestowed on SSAB is the government assumption of the cost SSAB would have had to pay were it to have purchased the railroad itself.

Comment 9: Petitioner argues that the employment promotion grants given to SSAB and Surahammars are, in effect, labor subsidies which should be countervailed.

DOC Position: Two types of employment promotion grants were provided to SSAB and Surahammars. One type of grant was not limited to an enterprise or industry or group of enterprises or industries, and is therefore not countervailable. We found that the other type of grant was limited to the steel industry, and we have countervailed it as explained in section I.G. above.

Comment 10: Petitioner argues that public availability of research and development results obtained through government financing should not be considered in determining whether government funds for research and development are countervailable.

DOC Position: Regardless of the merits of petitioner's position, the Department's determination with respect to the research and development grants described in sections I.H. and II.C would remain the same.

Comment 11: Petitioner argues that the discount rate use in the Department's methodology should include a risk premium.

DOC Position: We disagree. As we have stated in the Subsidies Appendix, we only include a risk premium in the marginal cost of debt variable of the weighted cost of capital formula when a company is found to be uncreditworthy.

Comment 12: Petitioner urged the Department to reconsider initiating an upstream subsidy investigation on iron ore inputs to the Swedish carbon steel industry.

DOC Position: After review of the evidence contained in petitioner's April 4, 1985 submission and the evidence obtained during verification, we decided not to initiate an upstream subsidy investigation.

The petition and the April 4 brief together contain sufficient allegations that LKAB receives subsidies from the Swedish government and that these subsidies potentially have a significant effect on the carbon steel production costs of SSAB. However, the Department determined that there is insufficient evidence on the record establishing a "reasonable basis to believe or suspect" that iron ore inputs from LKAB confer a "competitive benefit" on SSAB's production and exportation of carbon steel, within the meaning of 19 U.S.C. 1671b(g) to warrant an upstream subsidy investigation. The Department does, however, reserve the right to reconsider this determination in any section 751 review of this case.

Respondent's Comments

Comment 1: Counsel for Surahammars argues that the company should be excluded from the final determination since it received no benefits under any of the programs under investigation.

DOC Position: We agree. We excluded Surahammars because the benefits it received were *de minimis*.

Comment 2: Counsel for SSAB argues that it has been creditworthy throughout the period under investigation since SSAB was able to obtain long-term commercial loans without the aid of government action or guarantees.

DOC Position: We agree. See our discussion in section I.B. above.

Comment 3: SSAB argues that, except possibly for every small amounts received prior to 1980, any benefits which SSAB received under the grants for employment promotion schemes are not countervailable since they were generally available. SSAB further argues that those benefits which it did receive represented reimbursement for a portion of the wages of specific redundant employees who were kept on the payroll but assigned to non-productive work. Finally, SSAB argues that any benefits should be accrued only in the years of receipt of the reimbursement by SSAB.

DOC Position: See sections I.A. and I.G. above.

Comment 4: SSAB argues that grants for staff training projects and grants for health-care centers are not limited to an industry or group of industries, and therefore are not countervailable.

DOC Position: See section I.A. above.

Comment 5: SSAB argues that the following programs are not countervailable since they operate solely as cost-offsets: (1) Loans and grants for location of industry; (2) loans and grants for regional investment projects; and (3) grants for regional freight rate relief. SSAB also argues that the freight rate relief program confers no lasting benefit and should in all events, as a recurring program, be allocated only to the year of receipt.

DOC Position: Before the Department can offset these loans or grants by any amount, two conditions would have to be met. First, SSAB would have to demonstrate how the costs fall within one of the categories of "offsets" contained in section 771(6). Second, SSAB would have to establish some sort of linkage or relationship between the subsidy involved and the offset claimed (see, e.g., *Wool from Uruguay*, 46 FR 19288 (1981)). SSAB has met neither of these conditions.

Because grants for freight relief are available only to industries in certain regions of Sweden, we have determined that they are countervailable regional subsidies. Since the freight relief grants are recurring benefits, we used only the grants received during the review period to calculate the countervailable benefits.

Comment 6: SSAB argues that in computing the effect of the ITA's conditional reconstruction loans, the ITA should apply its traditional "Grant Cap" rule. Furthermore, SSAB argues that in determining the amount of the "grant equivalent" of each conditional reconstruction loan, appropriate adjustment must be made for those portions of the loan found not to be countervailable (i.e., for redundant employees) and also for the payments made by SSAB against these loans as a condition for the payment of dividends.

DOC Position: The Department has applied its "Grant Cap" rule to its calculations. The Department has not made any adjustment to the reconstruction loans for redundant employees since SSAB has not given the Department a sufficient basis to justify this offset (see DOC response to SSAB's Comment 5). The Department has, however, made appropriate adjustment for any principal or interest payments that SSAB made on its reconstruction loans.

Comment 7: SSAB argues that the preliminary decision miscalculated the countervailable benefit from the variable-rate structural loans, and failed to give full credit for interest paid thereon in 1984.

DOC Position: In this determination the Department has taken into account all interest paid on the variable-rate structural loans, including the interest paid in 1984.

Comment 8: SSAB argues that the preliminary determination erred in failing to deduct from the conditional reconstruction loans the cost to SSAB of compensating redundant employees beyond the legal requirement therefor.

DOC Position: We disagree. Despite repeated requests from the Department, SSAB has never identified which government funds were allegedly earmarked for redundancy costs, nor has it given the Department enough information to establish that these alleged redundancy costs could be considered offsets to the reconstruction loans under section 771(6) of the Act (also see respondent's Comment 5 above).

Comment 9: SSAB argues that SSAB has been equityworthy throughout its existence.

DOC Position: We disagree. See our discussion in section I.D. above.

Comment 10: SSAB claims that the following programs either do not exist, or that SSAB does not benefit from them: (1) Export financing; (2) credit guarantees; and (3) municipal subsidies.

DOC Position: We agree.

Comment 11: SSAB requested that the Department do additional verification on costs relating to early retirement and redundant employees.

DOC Position: The Department did not conduct a second verification because we did not feel that any purpose would be served by it. As the Department repeatedly informed SSAB, the information which SSAB submitted on the so-called redundant employee issue was deficient in a number of significant respects. In particular, none of SSAB's responses or submissions identified with any precision which funds SSAB is referring to, or what portion of the funds received were used to pay for redundant employees. The purpose of a verification is to determine the accuracy of submitted information. It is the responsibility of the respondents, not the Department, to correct deficiencies in submissions (see *Bicycle Tires and Tubes from Korea*, 44 FR 28727, 28729 (1982)).

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determinations. Commerce officials spent from March 25 - April 4, 1985, verifying the information submitted by the government of Sweden, SSAB, Surahammars, and LKAB, gathering additional information to be used in these determinations. During this verification, we followed normal verification procedures, including the inspection of documents and ledgers, and the tracing of information in the response to source documents, accounting ledgers and financial statements.

Administrative Procedures

We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35) A public hearing was not requested. In accordance with the Department's regulations (19 CFR 355.34(a)), written views have been received and considered in these determinations.

Exclusion of Surahammars

On January 25, 1985, counsel for Surahammars Bruks AB requested that the company be excluded from any countervailing duty order pursuant to 19 CFR 355.38. We excluded Surahammars because we determined that the benefits it received were *de minimis*.

Suspension of Liquidation

In accordance with our preliminary countervailing duty determinations published on March 20, 1985, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to collect the estimated net subsidy. The countervailing duty final determinations were extended to coincide with the antidumping final determinations on the same products from Austria, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act). However, we cannot impose a suspension of liquidation on the subject merchandise for more than 120 days without the issuance of a final determination. Therefore, on July 17, 1985, we instructed the U.S. Customs Service to terminate the suspension of liquidation on the subject merchandise entered on or after July 19, 1985. On July 19, the United States Steel Corporation, petitioner in this case, obtained a temporary restraining order enjoining the U.S. Department of Commerce and the U.S. Customs Service from terminating the suspension of liquidation in this case. On July 25, 1985, the Court of International Trade lifted the July 19, 1985 temporary restraining order; therefore, we instructed the U.S. Customs Service to terminate the suspension of liquidation on the subject merchandise entered on or after July 26, 1985, under the preliminary countervailing duty determination. We will instruct the U.S. Customs Service to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between March 20, 1985 and July 25, 1985. This suspension of liquidation does not apply to entries of the subject merchandise entered on or after July 26, 1985, and the final ITC determinations. We will reinstate suspension of liquidation if the ITC issues a final affirmative determination.

ITC Notification

In accordance with section 705(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 written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted, as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exists, we will issue a countervailing duty order, directing the Customs officers to assess countervailing duties on all entries of certain carbon steel products from Sweden (except for Surahammars) entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This notice is published in accordance with section 705(d) of the Act (19 U.S.C. 1671d(d)).

Theodore W. Wu,

Acting Assistant Secretary for Trade Administration.

August 12, 1985.

Appendix—Description of Products: Sweden

1. The term "*carbon steel plate*" covers hot-rolled carbon steel products, whether or not corrugated, or crimped; not pickled; not cold-rolled; not in coils, not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6620 and 607.6625 of the *TSUSA*. Semi-finished products of solid rectangular cross-section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

2. The term "*hot-rolled carbon steel flat-rolled products*" covers hot-rolled carbon steeel products, whether or not corrugated, or crimped; not cold-rolled; not cut, not pressed, and not stamped to

non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; pickled, as currently provided for in item 607.8320 of the *TSUSA*; and not pickled and in coils; as currently provided for in item 607.6610, or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*.

3. The term "*cold-rolled carbon steel flat-rolled products*" covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width, and 0.1875 inch or more in thickness, as currently provided for in item 607.8320 of the *TSUSA*; or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils; as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

[FR Doc. 85-19751 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-505]

Initiation of Countervailing Duty Investigation; Oil Country Tubular Goods From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Canada of oil country tubular goods (OCTG), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Tariff Act of 1930, as amended (the Act). The ITC will make its preliminary determination on or before September 5, 1985. If our investigation proceeds normally, we will make our preliminary determination on or before October 15, 1985.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Morrison or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1248 or 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On July 22, 1985, we received a petition in proper form filed by Lone Star Steel Company and CF & I Steel Corporation which produce OCTG. 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 Canada of OCTG receive subsidies within the meaning of section 701 of the Act. In addition, the petition alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act. On August 8, 1985, we received a letter from petitioners' counsel amending and clarifying the bases for petitioner's subsidy allegations.

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation and the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on OCTG from Canada and have found that it meets those requirements. Therefore, we are initiating the countervailing duty investigation to determine whether manufacturers, producers, or exporters in Canada of OCTG, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before October 15, 1985.

Scope of Investigation

The products covered by this investigation are "oil country tubular goods", which are hollow steel products of circular cross-section intended for use in drilling for oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA) under item numbers 610.3216, 610.3219, 610.3233, 610.3234, 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 oil country tubular goods that are in both finished and unfinished condition.

Allegations of Subsidies

The petition alleges that manufacturers, producers, or exporters in Canada of OCTG receive benefits under the following programs which constitute subsidies. We are initiating an investigation on the following allegations:

- Government grants for the purchase of certain fixed assets;
- Loans on terms inconsistent with commercial considerations;
- Industrial and Regional Development Program (IRDP);
- Low interest loans under the Enterprise Development Program (EDP);
- Program for Export Market Development (PEMD);
- Promotional Projects Program;
- Investment Tax Credit;
- Community-Based Industrial Adjustment Program (CIAP);
- Ontario Development Corporation Export Support Loans;
- Other Ontario Development Corporation loans and loan guarantees on terms inconsistent with commercial considerations;
- Programs sponsored by the Alberta Opportunity Company and the Saskatchewan Economic Development Corporation; and
- Department of Regional Industrial Enterprises Subsidiary Agreements.

We are not initiating on the following allegation:

Enterprise Development Program—Grants and Loan Insurance

Petitioners allege that the government of Canada provides grants and loan

insurance to finance plant expansion and modernization, to implement productivity improvements and/or product or process innovations and to cover the cost of market feasibility studies, and development proposals. In a past investigation, the Department found this program not to be countervailable (see "Final Negative Countervailing Duty Determinations: Certain Softwood Products from Canada" (48 FR 24159, May 31, 1983)). Petitioners have not presented new evidence nor have they alleged changed circumstances with respect to this program.

Allegation of Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of OCTG from Canada. They claim that the products under investigation benefit from export subsidies that are inconsistent with the Agreement (the Subsidies Code), and that imports have been massive over a relatively short period. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. 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 written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 5, 1985, whether there is a reasonable indication that imports of OCTG from Canada materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 12, 1985.

[FR Doc. 85-19752 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-583-504]

Initiation of Countervailing Duty Investigation; Oil Country Tubular Goods From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Taiwan of oil country tubular goods (OCTG), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Tariff Act of 1930, as amended (the Act). The ITC will make its preliminary determination on or before September 5, 1985. If our investigation proceeds normally, we will make our preliminary determination on or before October 15, 1985.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Terry Link or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0189 or 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On July 22, 1985, we received a petition in proper form filed by Lone Star Steel Company and CF & I Steel Corporation which produce OCTG. 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 Taiwan of OCTG receive subsidies within the meaning of section 701 of the Act. In addition, the petition alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act.

Since Taiwan is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on OCTG from Taiwan and have found that it meets those requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Taiwan of OCTG, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before October 15, 1985.

Scope of Investigation

The products covered by this investigation are "oil country tubular goods", which are hollow steel products of circular cross-section intended for use in drilling for oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA) under item numbers 610.3216, 610.3219, 610.3233, 610.3234, 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 oil country tubular goods that are in both finished and unfinished condition.

Allegations of Subsidies

The petition alleges that manufacturers, producers, or exporters in Taiwan of OCTG receive benefits under the following programs which constitute subsidies. We are initiating an investigation on the following allegations:

- Preferential Export Financing;
- Export Loss Reserves;
- Tax Exemptions for Export Sales;
- Preferential Prices for Raw Materials;

• Domestic Benefits Under the SEI:
—Preferential Income Tax Rate Ceilings;
—Accelerated Depreciation and Tax Holidays;
—Tax Deduction for Investment in Production Equipment;
—Duty Exemption and Deferral on Imported Equipment; and
—Preferential Long-Term Loans.

We are not initiating on the following allegations:

1. Equity Infusions

Petitioners allege that Article 84 of the SEI permits Taiwan authorities to establish a development fund to be used for sole or joint investments in important enterprises. Although petitioners provided no information that the Taiwan authorities invested in FEMCO or that FEMCO is unequity-worthy, they request that the Department examine whether FEMCO has received equity infusions through this program.

In our "Subsidies Appendix" attached to the notice of "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina" which was published in the April 26, 1984, issue of the Federal Register (49 FR 18006), we state that government equity ownership *per se* does not confer a subsidy. Government ownership confers a subsidy only when it is on terms inconsistent with commercial considerations. Since petitioners have provided no information that the authorities in Taiwan have made equity investments in FEMCO or that any such investments are inconsistent with commercial considerations, we are not initiating on this allegation.

2. Raw Material Import Duty Exemptions

Petitioners allege that the OCTG industry in Taiwan benefits from the preferential exemption from, or reduction of, import duties on raw materials that are reexported. Under both U.S. law and the General Agreement on Tariffs and Trade, the remission of customs duties due on imported items which are physically incorporated into exported final products is not regarded as a subsidy. Since this allegation does not constitute a subsidy, we are not initiating on it.

Allegation of Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of OCTG from Taiwan. They claim that the products under investigation benefit from export subsidies that are inconsistent with the Agreement (the Subsidies Code), and that imports have been massive over a relatively short period. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

Notification of ITC

Section 702(d) of the act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assisant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 5, 1985, whether there is a reasonable indication that imports of OCTG from Taiwan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 12, 1985.

[FR Doc. 85-19753 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-455-402]

Termination of Antidumping Duty Investigation; Carbon Steel Plate From Poland

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In a letter dated August 5, 1985, petitioner withdrew its antidumping duty petition, filed on December 19, 1984, on carbon steel plate from Poland. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-4136.

SUPPLEMENTARY INFORMATION:

Case History

On December 19, 1984, we received a petition from United States Steel Corporation, on behalf of the U.S. industry producing carbon steel plate.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on January 8, 1985 (50 FR 1915). On February 4, 1985, the ITC found that there was a reasonable indication that imports of carbon steel plate from Poland materially injure, or threaten material injury to, United States industry.

Scope of Investigation

The product under investigation is carbon steel plate which covers hot-rolled carbon steel products whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6620 and 607.6625 or the *Tariff Schedules of the United States Annotated* (TSUSA). Semifinished products of solid rectangular cross section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

Withdrawal of Petition

In a letter dated August 5, 1985, petitioner notified us that it was withdrawing its December 19, 1984 petition, and requested that the investigation be terminated. Under section 734(a) of the Tariff Act of 1930, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), 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 a bilateral arrangement with the Government of Poland 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, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultations, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioner's withdrawal and our intention to

terminate. For these reasons, we are terminating our investigation.

Dated: August 12, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-19699 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-501]

Oil Country Tubular Goods From Argentina; 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 oil country tubular goods (OCTG) from Argentina 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 this product 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 September 5, 1985, and we will make ours on or before December 30, 1985.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Karen Sackett; Office of Investigations, Import Administration, International Trade Administation, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1778.

SUPPLEMENTARY INFORMATION:

The Petition

On July 22, 1985, we received a petition in proper form filed by Lone Star Steel Company and CF&I Steel Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Argentina 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 petition also alleges that sales of the subject merchandise are being made at less than the cost of production. Petitioners were unable to obtain price information for U.S. sales. Therefore, they calculated United States price based on the Customs value for Argentine imports of the merchandise during the fourth quarter 1984 and first quarter 1985, with deductions for estimated inland freight costs in Argentina. Since petitioners also were unable to secure home market or third country prices for the merchandise subject to this investigation, foreign market value was based on Lone Star Steel's costs for the merchandise adjusted for cost differences in certain production inputs in Argentina. Using this comparison, petitioner allege dumping margins ranging from 42 to 113 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 further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on OCTG from Argentina and have 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 OCTG from Argentina are being, or are likely to be, sold in the United States at less than fair value.

Petitioners also allege that there are no home market sales and that substantially all third country sales are at prices below the cost of production. Petitioners relied on the final determination in the antidumping investigation of OCTG from Argentina, 50 FR 12595 (March 19, 1985) which included a finding of sales below the cost of production. However, that finding was made with respect to the investigatory period, January 1, 1984 to June 30, 1984. In its petition in the present investigation, petitioners have supplied no information with respect to more recent home market or third country sales. Nor have they offered any information that would lead us to conclude that there has been no change from the earlier period. Consequently, we conclude that at this time, we do not have reasonable grounds to believe or suspect that sales are being made below the cost of production.

If our investigation proceeds normally, we will make our preliminary determination by December 30, 1985.

Scope of Investigation

The products covered by this investigation are "oil country tubular goods" which are hollow steel products of circular cross-section intended for use in drilling for oil or gas. These products include oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured 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 610.326, 610.3219, 610.3233, 610.3234, 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 in both finished and unfinished condition.

Notification of ITC

Section 723(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 September 5, 1985, whether there is a reasonable indication that imports of OCTG from Argentina 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 procedures.

Dated: August 12, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-19696 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-506]

Oil Country Tubular Goods From Canada; 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 oil country tubular goods from Canada 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 this product 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 September 5, 1985, and we will make ours on or before December 30, 1985.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Patrick O'Mara, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1168.

SUPPLEMENTARY INFORMATION:

The Petition

On July 22, 1985, we received a petition in proper form filed by Lone Star Steel Company and CF & I Steel Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise 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 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. Petitioners also allege the existence of critical circumstances.

The petitioners based United States price on price quotes for Canadian OCTG selling in the U.S. market during late 1984 and the first half of 1985. They deducted from these price quotes estimated amounts for a six percent distributor's commission, freight and U.S. customs duty to arrive at a net U.S. price for each item. Petitioners also calculated a weighted-average customs value for carbon steel and alloy casing and tubing based on Department of Commerce import statistics for the first quarter of 1985.

The petitioners based foreign market value upon actual price quotes for sales of OCTG in Canada. The net home market prices were arrived at by deducting estaimted freight and a six percent distributor's mark-up from actual price quotes for the first half of 1985. Petitioners also alleged sales of Canadian OCTG below the cost of production based on a comparison of the net home markets prices to the estimated Canadian costs. They estimated Canadian production costs for each of four representative types of OCTG by adjusting Lone Star's production costs for known differences in inputs and capacity utilization rates in Canada. Petitioners presented these costs as applied to an integrated producer and a nonintegrated producer. The integrated producer's costs were estimated by adjusting Lone Star's costs to take into account known differences in U.S. and Canadian input prices. The nonintegrated producer's costs were estimated by adjusting Lone Star's costs of converting hot-rolled sheet into OCTG to take into account known differences in Canadian and U.S. input prices, and adding to these conversion costs the cost of purchased hot-rolled sheet.

Based on a comparison of each net U.S. price with its estimated foreign market value, petitioners allege dumping margins ranging from 4.19 to 129.34 percent. Petitioners also calculated dumping margins based on a comparison of the average customs value of OCTG imported from Canada in the first quarter of 1985 and constructed values. Based on these comparisons, petitioners alleged dumping margins ranging from 1.36 to 117.24 percent for integrated producers and from 40.85 to 82.75 percent for nonintegrated producers.

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 oil country tubular goods from Canada and have found that it meets the requirements of section 732(b) of the Act and § 353.36(a) of the Commerce Regulations (19 CFR 353.36b(a)). Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether oil country tubular goods from Canada are being, or are likely to be, sold in the United States at less than fair value. We will also investigate the allegation that the home market sales are below the cost of production. If our investigation proceeds normally, we will make our preliminary determination by December 30, 1985.

Scope of Investigation

The merchandise covered by this investigation is "oil country tubular goods" which are hollow steel products of circular cross section intended for use in drilling for oil or gas. These products include oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the *Tariff Schedules of the United States Annotated (TSUSA)*: 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.2925, 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, 610.5244.

Allegation of Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of OCTG from Canada. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

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 detemination. 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 the administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 5, 1985, whether there is a reasonable indication that imports of oil country tubular goods from Canada 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 procedures.

Dated: August 12, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-19697 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-505]

Oil Country Tubular Goods From Taiwan; 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 oil country tubular goods (OCTG) from Taiwan are being, or are likely to be, sold in the United States at less than fair value. The petition also contains an allegation of critical circumstances. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product 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 September 5, 1985, and we will make ours on or before December 30, 1985.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: John Kenkel; 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) 377-4929.

SUPPLEMENTARY INFORMATION:

The Petition

On July 22, 1985, we received a petition in proper form filed by Lone Star Steel Company and CF&I Steel Corporation. 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 Taiwan 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 petition also alleges that sales of the subject merchandise are being made at less than the cost of production, and that critical circumstances exist. Petitioners were unable to obtain price information for U.S. sales. Therefore, they calculated United States price based on the customs value for imports from Taiwan of the merchandise during the fourth quarter 1984 and first quarter 1985 with deductions for estimated inland freight costs in Taiwan. Since petitioners also were unable to secure home market or third country prices for the merchandise subject to this investigation, foreign market value was based on Lone Star Steel's costs for the merchandise adjusted for cost differences in certain production inputs in Taiwan. Using this comparison, petitioners allege dumping margins ranging from 175 to 213 percent. Petitioners state that their allegation of sales below cost of production is based on the estimated cost of producing OCTG in Taiwan in comparison with prevailing market prices for OCTG during the first quarter of 1985 in third country markets. The third country market prices were not specified.

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 further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition of OCTG from Taiwan and have 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 OCTG from Taiwan are being, or are likely to be, sold in the United States at less than fair value. Although the petitioners alleged that home market and third country sales are being made at less than the cost of production of the subject merchandise in Taiwan, they did not provide adequate home market or third country prices on which to base their allegations. Therefore, we will not undertake to determine whether there are sales at less than the cost of production at this time. If our investigation proceeds normally, we will make our preliminary determination by December 30, 1985.

Scope of Investigation

The products covered by this investigation are "oil country tubular goods" which are hollow steel products of circular cross section intended for use in the drilling for oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured 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) under item numbers 610.3216, 610.3219, 610.3233, 610.3234, 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. The investigation includes OCTG that are in both finished and unfinished condition.

Allegation of Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of OCTG from Taiwan. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

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 acess 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 September 5, 1985, whether there is a reasonable indication that imports of OCTG from Taiwan 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 procedures.

Dated: August 9, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 19698 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DS-M

Biotechnology Technical Advisory Committee; Partially Closed Meeting

A meeting of the Biotechnology Technical Advisory Committee will be held September 23, 1985, at 9:30 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue NW., Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to biotechnology and related equipment or technology.

Agenda

1. Welcoming remarks by the Chairman.
2. Introduction of members and guests.
3. Presentation of papers or comments by the public.
4. Discussion of the proposed definition of biotechnology.
5. Discussion of current DOC controls on biotechnology exports (CCL Groups 7 and 9, Interpretive Notes 24 and 28).
6. Action items and plans for next meeting.

Executive Session

7. Discussions 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 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 matters 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 Jess M. Bratton (202) 377-2583.

Dated: August 13, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85-19723 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DT-M

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held September 24, 1985, at 9:30 a.m., the Herbert C. Hoover Building, Room 5230, 14th and Constitution Avenue NW., Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer peripherals, components and related test equipment or technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Tutorial by 3-M Co. on optical recording technology.
4. Briefing by DOC on the new Export Administration Act and its impact on the Committee.
5. Response by DOC on the May 31 letter on floppy disks.
6. Report on membership by the Chairman and a request for nominations for committee membership.
7. Preview of the 1985 Annual Report.

Executive Session

8. Discussions 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 will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information or copies of the minutes call (202) 377-2583.

Dated: August 13, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85-19724 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DT-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-076,706 (4,513,528)
Rope Wick Applicator
SN 6-497,657 (4,515,780)
Animal Nutrition
SN 6-742,485
Method for Predicting the Acceptability of Coarsely Ground Beef

Department of Commerce

SN 6-300,830 (4,445,389)
Long Wavelength Acoustic Flowmeter
SN 6-571,288 (4,520,320)
Synchronous Phase Marker and Amplitude Detector

Department of Health and Human Services

SN 6-708,517
Blood Lysis and Culture System

Department of the Air Force

SN 6-329,558 (4,513,429)
Sample Data Phase Locked Loop for Adaptive Doppler Tracker
SN 6-343,032 (4,518,759)
Synthesis of Arylene Siloxanylene Polymers and Copolymers
SN 6-347,391 (4,516,858)
Multiple Site Laser Excited Pollution

Monitoring System
SN 6-347,749 (4,517,568)
Angle Set-On Apparatus
SN 6-361,016 (4,510,525)
Stereoscopic Video Imagery Generation
SN 6-388,327 (4,510,622)
High Sensitivity Millimeter-Wave Measurement Apparatus
SN 6-388,574 (4,511,219)
Kalman Filter Preprocessor
SN 6-403,246 (4,520,504)
Infrared System with Computerized Image Display
SN 6-403,247 (4,511,228)
Measurement of Visual Contract Sensitivity
SN 6-431,434 (4,517,517)
Nickel-Cadmium Battery Conditioner and Tester Apparatus
SN 6-431,866 (4,517,464)
Sensor System
SN 6-439,439 (4,514,056)
Acoustically Tuned Optical Filter System
SN 6-442,496 (4,514,758)
Fall Velocity Indicator/Viewer
SN 6-452,601 (4,511,220)
Laser Target Speckle Eliminator
SN 6-471,550 (4,517,570)
Method for Tuning a Phased Array Antenna
SN 6-478,589 (4,508,662)
Pentafluorotelluriumoxide Fluorocarbons
SN 6-486,477 (4,519,055)
Optical Disc Transport System
SN 6-486,603 (4,520,364)
Attachment Method-Ceramic Radome to Metal Body
SN 6-529,412 (4,517,618)
Protection Circuitry for High Voltage Drivers
SN 6-566,352 (4,515,001)
Variable Radius Lead Former
SN 6-577,391 (4,510,377)
Small Cartridge Heater
SN 6-643,140 (4,515,847)
Erosion-Resistant Nosetip Construction
SN 6-741,644
Arithmetic Pipeline for Image Processing
SN 6-743,853
Harmonic Distortion Reduction Technique for Data Acquisition
SN 6-744,593
Liquid Crystal Non-Destructive Inspection of Metals

Department of the Army

SN 6-455,362 (4,508,929)
Recovery of Alcohol from a Fermentation Source by Separation Rather than Distillation
SN 6-730,125
Photosensitive Cartidge for Weapons Zeroing and Marksmanship Training
SN 6-732,335
Forward Field Autotransfusion Device
SN 6-740,610
Suture Needle Holder.

[FR Doc. 85-19717 Filed 8-16-85; 8:45 am]
BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Cotton, Wool and Man-Made Fiber Apparel Products Produced or Manufactured in India

August 14, 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 August 20, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated December 21, 1982, as amended, between the Governments of the United States and India, provides for the borrowing of yardage from the succeeding year's limit (carryforward) with the amount used being deducted from the category limit in the succeeding year. Under the terms of the bilateral agreement, as amended, the limit established for cotton, wool and man-made fiber apparel products in Categories 330-359, 432-459, and 630-659, as a group, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1985, is being reduced by 3,482,693 square yeards equivalent to 111,007,307 square yards equivalent to account for carryforward used in 1984.

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.

August 14, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC. 20229

Dear Mr. Commissioner: On December 21, 1984, the Chairman of the Committee for the Implementation of Textile Agreements, directed you to prohibit entry of cotton, wool and man-made fiber textile products exported during the twelve-month period beginning on January 1, 1985 and extending through December 31, 1985, produced or manufactured in India, in excess of designated limits. The Chairman further advised you that the limits are subject to adjustment.[1]

Effective on August 20, 1985, paragraph 1 of the directive of December 21, 1984 is hereby amended to include an adjusted limit of 111,007,307 square yards equivalent,[2] for Categories 330-359, 431-459, 630-659, as a group.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-19766 Filed 8-16-85; 8:45 am]
BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products From Malaysia Under a New Bilateral Agreement

August 14, 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 August 20, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and

[1] The term "adjustment" refers to those provisions of the bilateral agreement between the Governments of the United States and India which provide, in part, that: (1) group and specific limits may be exceeded by designated percentages for swing, carryover and carryforward, and (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

[2] The limit has not been adjusted to account for any imports exported after December 31, 1984.

Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Governments of the United States and Malaysia exchanged notes dated July 1, 1985 and July 11, 1985 on a new Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement beginning on January 1, 1985 and extending through December 31, 1989 for goods exported during that period. The agreement establishes specific limits for cotton, wool and man-made fiber textile products in Categories 313, 331, 333/334/335, 336, 338/339, 340, 341, 345, 347/348, 438pt. (only women's knit shirts and blouses), 445/446, 604, 638/639 and 640, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made firber textile products in the foregoing categories in excess of the designated twelve-month restraint limits.

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 agreement, 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.

August 14, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

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 effected by exchange of notes dated July 1, and July 11, 1985, 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 August 20, 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 in 1985, in excess of the indicated restraint limits:

Category	12-mo limits [1]
313	13,000,000 square yards.
331	620,100 dozen pairs.
333/334/335	100,228 dozen of which not more than 50,114 dozen shall be in Category 333 or in Category 335 and not more than 45,103 dozen shall be Category 334.
336	65,000 dozen.
336/339	510,000 dozen of which not more than 199,402 dozen shall be in Category 339.
340	348,162 dozen.
341	254,000 dozen.
345	74,250 dozen.
347/348	208,850 dozen of which not more than 109,203 dozen shall be in Category 348.
438 pt.[2]	11,000 dozen.
445/446	26,000 dozen.
604	1,365,854 pounds.
638/639	222,283 dozen.
640	260,000 dozen.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1984.

[2] In Category 438, only T.S.U.S.A. numbers 383.1307, 383.1309, 383.2511, 383.5234, 383.5810, 383.6310, 383.7724, 383.9540.

In carrying out this directive, entries of wool and man-made fiber textile products in the foregoing categories, except Categories 313, 336, 438 pt.[1] 638/639 and 640, produced or manufactured in Malaysia which have been exported to the United States during the period beginning on January 1, 1984 and extending through December 31, 1984, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during that twelve-month period. In the event the restraint limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter. Textile products in Categories 336, 438 pt.[1] 638/639, and 640 which have been exported before January 1, 1985 shall not be subject to this directive.

The restraint limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement 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 5 percent, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the same agreement year; (2) specific limits may be adjusted for carryover and carryforward up to 11 percent of the applicable category limits; 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(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–19767 Filed 8–16–85; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 438, only T.S.U.S.A. numbers 383.1307, 383.1309, 383.2511, 383.5234, 383.5810, 383.6310, 383.7724, 383.9540.

Adjusting the Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Pakistan

August 14, 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 August 14, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 27, 1984 a notice was published in the **Federal Register** (49 FR 50238), announcing the establishment to import restraint limits for certain categories of cotton textiles and cotton textile products, including cotton gloves in Category 331, produced or manufactured in Pakistan and exported during 1985. The limit for Category 331 reflected an adjustment for carryforward applied to the 1984 limit for the category. CITA has determined that the carryforward was not used in 1984; accordingly, the 1985 limit is being increased by 33,601 dozen pairs, the

amount of unused carryforward, to 599,221 dozen pairs.

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.

August 14, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

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 textiles and cotton textile products, produced or manufactured in Pakistan and exported during 1985.

Effective on August 14, 1985, the directive of December 21, 1984 is hereby further amended to include the following adjusted restraint limit for cotton textile products in Category 331:[1]

Category	Adjusted 12-mo restraint limit[1]
331	599,221 dozen pairs.

[1] The limit has not been adjusted to reflect any imports exported after December 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-19768 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The Bilateral Cotton Textile Agreement, effected by exchange of notes dated March 9 and 11, 1982, as amended, between the Governments of the United States and Pakistan, provides, among other things, that: (1) Within the aggregate limit specific restraint limits may be exceeded by designated percentages; (2) specific limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Requesting Public Comment on Bilateral Textile Consultations With Bangladesh on Categories 335 and 347/348

August 14, 1985.

On July 29, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Bangladesh to enter into consultations concerning exports to the United States of women's, girls' and infants' cotton coats in Category 335 and cotton trousers, slacks and shorts in Category 347/348, produced or manufactured in Bangladesh.

The purpose of this notice is to advise the public that, if no agreement is reached in consultations with Bangladesh, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of textile products in Categories 335 and 347/348, produced or manufactured in Bangladesh and exported to the United States during the twelve-month period which began on July 29, 1985 and extends through July 28, 1986 at levels of 84,010 dozen (Category 335) and 615,044 dozen (Category 347/348).

Summary market statements for these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of the foregoing categories is invited to submit such comment 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. 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., any 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.

Bangladesh—Market Statement

Category 335—Women's, Girls', and Infants' (WGI) Cotton Coats, etc.

July 1985.

Summary and Conclusions

United States imports of Category 335 from Bangladesh were 83,000 dozens in the year-ending May 1985. This is 131 percent higher than the 36,000 dozens imported in the previous twelve months. These imports compare with 5,200 dozens imported in 1983, 2,500 dozens in 1982 and less than 600 dozens in 1981.

These increases of low price imports have disrupted the market in this category.

Production

U.S. production of Category 335 coats averaged 1.5 million dozens during the first half of the seventies 905,000 dozens during the second half and, 865,000 dozens from 1980 through 1983. Production in 1983 amounted to 661,000 dozens, down 25 percent from the 782,000 dozens produced in 1982. Production in 1984 was down an additional 21 percent from 1983. Cuttings of women's coats and tailored jackets were also down 22 percent in the first four months of 1985.

Imports

U.S. imports of Category 335 from all sources were at a record level of 2,177,000 dozens in 1984, up 33 percent from the 1,632,000 dozens imported in 1983. Year-ending May 1985 imports were up 10 percent from the same period in 1984. Imports grew 55 percent between 1980 and 1985.

Import Penetration

During the first half of the seventies, the ratio of imports to domestic production of Category 335 averaged 30 percent. This almost tripled to 88 percent during the last half of the decade and rapidly escalated to 246 percent during the first four years of the eighties. The 1984 ratio reached an all time high of 414.7 percent, one of the highest ratios of all apparel items.

The domestic producers' share of the market for domestically produced and imported Category 335 declined precipitously during the seventies and continued downward in the early eighties. They accounted for only 19 percent of the market in 1984.

Bangladesh—Market Statement

Categories 347/348—Cotton Trousers, etc.

July 1985.

Summary and Conclusions

United States imports of Categories 347/348 from Bangladesh were 739,000 dozens for the year ending May 1985. This was over twelve times greater than the 59,000 dozens imported one year earlier. In the first five months of 1985 Bangladesh was the third largest supplier of these categories. Imports

from Bangladesh were 232,000 dozens for full-year 1984, 20,000 dozens in 1983 and less than 400 dozens in 1982.

The substantial growth in imports from Bangladesh creates a real risk of market disruption of these categories.

U.S. Market

The markets for domestically produced and imported cotton trousers increased by close to 7 million dozens during 1982–1984. Imports captured over 85 percent of the gain. Since 1982, imports have increased by 6 million dozens. During this same time period, the U.S. producers' share of the cotton trouser markets declined from 75 percent to 68 percent.

U.S. Production

Cotton trouser production was up in 1984, increasing to 40,895,000 dozens from 39,715,000 in the previous year. Indicators are that U.S. producers are facing a worsening position in 1985. Cuttings of men's trousers were down 5.1 percent and women's trousers were off 6.3 percent for the first four months of 1985. Also, average weekly man-hours in the men's and boys' trouser industry during January–May 1985 were off by 7.9 percent compared to the same period in 1984.

Imports and Import Penetration

Imports were relatively stable during the late seventies and early eighties. However, they increased sharply in 1983 and significantly in 1984. The ratio of imports to domestic production increased from 32.9 percent in 1982 to 45.5 percent in 1983 to 46.9 percent in 1984.

Duty-Paid Value and U.S. Producer's Price

Forty-three percent of Bangladesh's imports of this combined category entered under Category 347 in the year ending May 1985. Over 70 percent of the Category 347 imports entered under TSUSA Number 379.6210—men's and boys' cotton shorts, not knit or ornamented. Over 75 percent of the Category 348 imports entered under four TSUSA numbers. These were 383.4726—WGI other cotton shorts, not knit or ornamented, 383.4756—girls and infants cotton trousers and slacks, corduroy, not knit or ornamented, 383.4761—women's other cotton trousers, slacks, etc., NSPF, not knit or ornamented and 383.4764—other girls and infants cotton trousers and slacks, not knit or ornamented. These trousers entered at duty-paid values well below the U.S. producer prices for comparable trousers.

[FR Doc. 85–19769 Filed 8–16–85; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Hong Kong to Review Trade in Category 637 (Man-Made Fiber Playsuits)

August 14, 1985.

On August 1, 1985 the Government of the United States requested consultations with the Government of Hong Kong with respect to Category 637. This request was made on the basis of the agreement, effected by exchange of notes dated June 23, 1982, as amended, between the Governments of the United States and Hong Kong 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 between the two governments, the United States Government may request the Government of Hong Kong to limit exports in Category 637, produced or manufactured in Hong Kong and exported to the United States during 1985. The Government of the United States reserves the right to control imports in these categories at the established limit.

Anyone wishing to comment or provide data or information regarding the treatment of Category 637 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. 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. 85–19770 Filed 8–16–85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With the Government of the Republic of Korea Concerning Category 670 (Braided Luggage)

August 14, 1985.

On July 29, 1985, the United States Government, requested the Government of the Republic of Korea to enter into consultations concerning exports to the United States of braided luggage of man-made fibers in Category 670 pt (only T.S.U.S.A. number 706.3420), produced or manufactured in Korea.

The purpose of this notice is to advise the public that if no solution is agreed upon in consultations with Korea, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of such products produced or manufactured in Korea and exported to the United States during the twelve-month period which began on July 29, 1985 and extends through July 28, 1986 at a level of 2,618,256 pounds.

Anyone wishing to comment or provide data or information regarding the treatment of Category 670 pt 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. 85–19771 Filed 8–16–85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With the Republic of Korea To Review Trade in Category 350

August 14, 1985.

On July 31, 1985, the Government of the United States requested consultations with the Government of the Republic of Korea with respect to

cotton dressing gowns in Category 350. 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 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 Category 350, produced or manufactured in Korea and exported to 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 this category from Korea under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, 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. 85-19772 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of the Socialist Federal Republic of Yugoslavia on Categories 434 and 435

August 14, 1985.

On July 31, 1985 the Government of the United States, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested consultations with the Government of the Socialist Federal Republic of Yugoslavia to enter into consultations concerning exports to the United States of men's and boys' wool coats in Category 434 and women's, girls' and infants' wool coats in Category 435, produced or manufactured in Yugoslavia.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Socialist Federal Republic of Yugoslavia, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of textile products in Categories 434 and 435, produced or manufactured in Yugoslavia and exported to the United States during the twelve-month period which began on July 31, 1985 and extends through July 30, 1986 at respective levels of 7,603 dozen and 32,555 dozen.

Summary market statements concerning these categories follow this notice.

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).

Anyone wishing to comment or provide data or information regarding the treatment of Categories 434 and 435 under Article 3 of the Multifiber Arrangement or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the 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.

Yugoslavia—Market Statement

Category 434—Other Wool Coats, Men's and Boys'

July 1985.

Summary and Conclusions

U.S. imports of Category 434—other (than suit-type) coats, men's and boys' from Yugoslavia during the year ending May 1985 were 7,872 dozens, more than double the imports of a year earlier. Imports of this category had increased from 3,315 dozens in 1983 to 7,713 dozens in 1984.

These imports are disrupting the United States market and are impeding the orderly development of trade.

U.S. Production and Market Share

U.S. production in 1984 continued the prevailing downward trend, declining from 314,000 dozens in 1983 to 293,000 dozens in 1984. Production in 1980 was 421,000 dozens. Imports almost tripled from 1980 to 1984 and the U.S. producer's share of the market for domestically produced and imported Category 434 dropped from 91 percent to 71 percent over the period.

U.S. Imports and Import Penetration

U.S. imports of Category 434 doubled from 59,502 dozens in 1983 to 119,309 dozens in 1984. Imports for the first five months of 1985 were up 45.6 percent from January–May 1984. The ratio of imports to domestic production increased geometrically from 9.6 percent in 1982 to 19.1 percent in 1983 to 40.6 percent in 1983. The sharp increase in imports in 1985 into a soft market indicates a further import penetration in 1985.

Duty-Paid Values and U.S. Producer's Prices

Approximately 82 percent of the year ending May 1985 imports from Yugoslavia entered under TSUSA No. 379.8315—overcoats, topcoats, and car coats. Yugoslavia was the second largest supplier of

these coats, accounting for 12.7 percent of the total imports. The imports from Yugoslavia are entered at duty-paid values below the U.S. producer prices for comparable coats.

Yugoslavia—Market Statement

Category 435—Women's, Girls' and Infants' (WGI) Wool Coats

Summary and Conclusions

Imports of WGI wool coats from Yugoslavia increased more than six fold during the year ending May to 33,385 dozens. This contrasts with the 1,795 dozens imported in calendar year 1983. During the twelve months ending May 1985, Yugoslavia accounted for nearly half of the growth in Category 435 imports from all sources and it became the third largest supplier of WGI wool coat imports to the United States.

These imports are disrupting the United States market and are impeding the orderly development of trade.

Production

U.S. producers faced production cutbacks in 1984 in the face of a weak market. Domestic production fluctuated marginally during 1980–1984 averaging about 1,164,000 dozens annually during this period. Production was 1,103,000 dozens in 1984.

U.S. Market and Domestic Producers Share

The U.S. WGI wool coat market slipped to 1,470,000 dozens in 1984 from a five year high of 1,544,000 dozens in 1983. Still, the 1984 level was above the five year annual average of 1,406,000 dozens.

Despite the relatively strong market, the U.S. producers' share declined in both 1983 and 1984, eroding to 75 percent in the latter year. In 1980, the U.S. market share was 86 percent.

Imports

Imports have nearly doubled in the last five-years, increasing from 190,000 dozens in 1980 to 367,000 dozens in 1984. The import-to-production ratio was 33.3 percent in 1984 compared with 16.3 percent in 1980. Category 435 imports were 20 percent higher during the year ending May 1985, at 360,680 dozens, than during the previous twelve months.

Import Values and U.S. Producer Price

Eighty-nine percent of the Category 435 imports from Yugoslavia entered under TSUSA No. 383.7220—WGI woven wool coats, other than suit-type, not ornamented and over 4 dollars per pound.

[FR Doc. 85-19773 Filed 8-16-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 16 October 1985, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, DC.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 14, 1985.

[FR Doc. 85-19774 Filed 8-16-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 8, 1985.

The USAF Scientific Advisory Board's Foreign Technology Division Advisory Group will meet at Wright-Patterson Air Force Base, Ohio on October 10 and 11, 1985. The meeting will convene from 8:00 a.m. to 5:00 p.m. on October 10 and from 8:00 a.m. to 1:00 p.m. on October 11.

The purpose of the meeting will be to receive classified briefings and advise on the feasibility and relevancy of applying artificial intelligence (AI) techniques to (a) technical intelligence analysis and (b) high volume data processing. Also, the structure of FTD's Mission Analysis program will be reviewed.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 19701 Filed 8-16-85 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tuesday & Wednesday, 10–11 September 1985.

Times of Meeting: 0830–1630 hours September 10; 0800–1500 hours September 11.

Places: Pentagon 2E715B, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense Follow On will receive numerous briefings from various governmental agencies. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-19726 Filed 8-16-85; 8:45 am]

BILLING CODE 3710-08-M

Defense Contract Audit Agency

Senior Executive Service; Membership of the Defense Contract Audit Agency (DCAA) Performance Review Board

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Notice of membership of the Defense Contract Audit Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Contract Audit 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 to the Director, Defense Contract Audit Agency, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Roger D. Kriesch, Personnel Management Specialist, Office of the Director of Personnel, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, VA. (202) 274–5798.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Board. They will serve a one-year term, effective upon publication of this notice.

Mr. Peter H. Tovar—Chief, Accounting and Finance Division, Office of the Comptroller, Defense Logistics Agency

Mr. John J. Quill—General Counsel, Defense Legal Services

Mr. Raymond E. Schmidt—Director, Contract Audit Management, Office of the Assistant Secretary (Comptroller), Office of the Secretary of Defense.

John van Santen,

Assistant Director, Resources.

[FR Doc. 85-19676 Filed 8-16-85; 8:45 am]

BILLING CODE 3620-01-M

Department of the Navy

Performance Review Board Membership

Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the Don's numerous Senior Executive Service (SES) Performance Review Boards. The purpose of the Boards is to provide fair and impartial review of the Senior Executive Service performance appraisals prepared by the senior executive's immediate and second level supervisors; to make recommendations to the Secretary of the Navy regarding acceptance or modification of the performance rating, transfer, reassignment, or removal from the SES of any senior whose performance is considered to be unsatisfactory; and to make nominations for financial performance awards. Composition of the particular Boards will be determined on an ad hoc basis from among those individuals listed below.

Department of the Navy

Nominees for Performance Review Board Membership

Dr. J.E. Andrews
Mr. E.P. Angrist
COMO C.E. Armstrong, USN
Mr. L.W. Arny
Mr. O.R. Ashe
Mr. R.J. Barnett
Mr. T.G. Berlincourt
Dr. E.A. Berman
Mr. J.T. Bolos
Mr. J.N. Brown
Mr. R.S. Buffum
Mr. F.J. Burchfield
Mr. R. Burow
Mr. C.H. Clark
CAPT. W.G. Clautice, USN
Dr. T. Coffey
The Honorable R.H. Conn
RADM P.C. Conrad, USN
RADM D.L. Cooper, USN
Mr. S. Cropsey
Dr. A.J. DiMascio
Mr. A.R. DiTrapani
Dr. A.M. Diness
Mr. H.L. Dixson
Dr. W.R. Ellis
RADM W.J. Finneran, USN
Mr. H.L. Fleck
COMO R.D. Friichtenicht, USN
Mr. P.A. Gale
Mr. R.G. Garant
Mr. H.E. Goldstein
Mr. C.V. Gorsey
Mr. R.L. Haas
Mr. G.R. Hamilton
Mr. K.B. Hancock
Mr. J.W. Hardman
Ms. M.H. Harris
Mr. W.R. Hattabaugh
Mr. B.W. Hays
Dr. L.L. Hill
Mr. R.M. Hillyer
Mr. P.M. Hitch
COMO L.J. Holloway, USN
COMO R. Horne, USN
Mr. T.A. Jacobs
Mr. R.V. Johnson
RADM J.P. Jones, Jr., USN
BGEN J.R. Joy, USMC
Mr. G. Keightley
Dr. C.V. Kincaid
Mr. H. Kitson, Jr.
CAPT R.W. Klementz, USN
Dr. R.A. Lefande
Mr. J.A. MacMillan
Mr. W.H. Lindahl
Mr. A.C. Magruder
Mr. W.H.J. Manthorpe
Mr. D.A. Matteo
RADM J. McArthur, USN
Mr. M.K. McElhaney
COMO D.W. McKinnon, Jr., USN
Mr. E.L. Messere
Mr. R.E. Metrey
Mr. J. Mills
RADM J.B. Mooney, Jr., USN
Dr. M.K. Moss
Mr. P.M. Murphy
Mr. R.A. Nagelhout
Mr. H.J. Nathan
Mr. C.P. Nemfakos
COMO M. Nielubowicz, USN
Mr. J.J. O'Conor
CAPT R.P. Onorato, USN
The Honorable M.R. Paisley
Mr. P.M. Palermo
Mr. F.A. Phelps
Mr. A.S. Prince
Dr. J.H. Probus
The Honorable E.A. Pyatt
COMO H.S. Quast, USN
Mr. W.G. Rae
BGEN G.M. Reals, USMC
Mr. W. Reese
Mr. D.W. Rehorst
Dr. B.B. Robinson
Mr. R.R. Rojas
Mr. R.L. Rumpf
Dr. F.E. Saalfeld
Mr. P.R. Sacilotto
Mr. H.R. Saldivar
Dr. A.I. Schindler
Mr. P. Schneider
Dr. P.A. Selwyn
Mr. R.L. Shaffer
Dr. J.J. Shepard
Mr. F.L. Sheridan
Mr. J.N. Shrader
Mr. W.T. Skallerup, Jr.
Mr. R.A. Steele
Mr. F.S. Sterns
Mr. F.W. Swofford
Mr. J.K. Taussig, Jr.
COMO J.D. Taylor, USN
Mr. R.O. Thomas
Mr. D. Turner
Mr. C.J. Turnquist
Mr. C.G. Untermeyer
Dr. B. Wald
Mr. H. Wang
RADM J.H. Webber, USN
Mr. A.R. Weiss
Mr. H.J. Wilcox
RADM J.B. Wilkinson, USN
Mr. W.N. Williams
Mr. R.S. Winokur
Dr. A.D. Wood
Mr. F.E. Wyant
RADM H.L. Young, USN
Dr. S.F. Zornetzer

For additional information, contact: Mr. Vincent J. Prantl, Executive Personnel Section (OP-145C), Office of the Chief of Naval Operations, Department of the Navy, Washington, D.C. 20350, Telephone: (202) 694-5760.

Dated: August 14, 1985.

W.F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-19727 Filed 8-16-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

International Energy Program; Request for Comment on Proposed Approval by the Secretary of Energy Pursuant to Section 5 of the Voluntary Agreement

AGENCY: Department of Energy.

ACTION: Publication of Notice of Proposed Approval of Participation by U.S. Oil Companies in the International Energy Agency's Fifth Allocation Systems Test, and Request for Comment.

SUMMARY: A draft of a proposed letter of approval with respect to U.S. oil company participation in the Fifth Test of the International Energy Agency's Emergency Oil Allocation Systems, along with operating procedures and recordkeeping requirements for such participation, is being published for public comment.

DATE: Written comments to be submitted by September 6, 1985.

ADDRESS: Comments should be submitted to Samuel M. Bradley, Deputy Assistant General Counsel for International Trade and Emergency Preparedness, Department of Energy, Mail Stop 6E-079, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Deputy Assistant General Counsel for International Trade & Emergency Preparedness, Room 6A-167, GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2900.

SUPPLEMENTARY INFORMATION:

Background: The International Energy Program

The Agreement on an International Energy Program (IEP), TIAS 8272, November 18, 1984, is a U.S. Executive Agreement entered into in the aftermath of the 1973-74 Arab oil embargo targeted at the U.S. and the Netherlands. The IEP provided for creation of the International Energy Agency (IEA) as an autonomous agency of the Organization for Economic Cooperation and Development (OECD). The IEP's main purposes include reducing the Free World oil consuming nations' vulnerability to supply disruptions by encouraging self-sufficiency in oil supplies; avoiding competition for short supplies of available oil during a disruption through a program for equitably allocating those supplies among the signatory countries; establishing a comprehensive international information system; and creating a forum for cooperation with governments and consultation with oil companies. There now are 21 member countries, consisting of all OECD members except France, Finland and Iceland, and collectively accounting for about 70% of Free World oil consumption.

The IEP provides that the IEA's Emergency Sharing System can be activated whenever, because of a serious oil supply disruption, the group

as a whole ("general trigger") or any participating country ("selective trigger") sustains or reasonably can be expected to sustain a 7% or greater reduction in the daily rate of its final oil consumption. In the general trigger situation, the IEA sharing formula would distribute the group supply shortfall among IEA member countries on the basis of a combination of (1) a specified common reduction in consumption within each member country, and (2) the relative national import-dependency of the member countries (with the more import-dependent countries taking the greatest losses in supplies). The emergency sharing formula establishes national "supply rights" and attributes "allocation obligations" and "allocation rights" to the individual IEA countries depending on whether their available oil supplies exceed or fall short of their supply rights. A country having an allocation obligation would be required to supply, to other IEA countries having allocation rights, that quantity of oil equal to the excess over its supply right.

The oil industry has an important advisory and functional role in the IEA, particularly during real emergencies. A number of U.S. and foreign oil companies have agreed to serve as IEA "Reporting Companies." When there appears to be a serious possibility that an oil supply shortfall will develop, the IEA may request activation of its emergency data system, which calls for the Reporting Companies to submit directly to the IEA comprehensive data on their oil imports and exports, their indigenous production and their inventories. If this shortfall in fact should develop and the IEA's Emergency Sharing System were activated during an oil supply crisis, international oil allocation is expected to be accomplished in large measure through the voluntary supply measures of the Reporting Companies, coordinated by the companies' technical experts serving on the Industry Supply Advisory Group (ISAG) in Paris.

Antitrust Approval for U.S. Industry Participation in the IEA's Fifth Allocation System Test

In order for U.S. Reporting Companies and their employees to participate in IEP activities, section 252 of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6272, makes available to U.S. oil companies a limited antitrust defense and a breach of contract defense for actions taken to carry out a voluntary agreement or plan of action to implement the allocation and information provisions of IEP. A Voluntary Agreement and Plan of Action to Implement the IEP (Voluntary Agreement) was approved by the U.S. Government in 1976. 2 CCH Federal Energy Guidelines, paragraph 15,845. Eighteen U.S. oil companies which are Reporting Companies currently participate in the Voluntary Agreement. Pursuant to section 252 of the EPCA, the Secretary of Energy monitors the carrying out of the Voluntary Agreement and is responsible for issuing antitrust approvals with respect thereto.

U.S. Voluntary Agreement participants have been requested to assist the IEA in conducting the IEA's Fifth Emergency Oil Allocation Systems Test (AST-5), which will begin with the transmission of a telex by the IEA Secretariat on September 20, 1985, announcing the hypothetical oil supply disruption. AST-5 is primarily a training exercise, involving aspects of the IEA Emergency Sharing System which were tested in prior allocation systems tests. AST-5 also will test certain aspects of the IEA's Emergency Oil Sharing System that have not been tested previously: (1) It will consider the ability of the IEA Emergency Management Organization to readjust voluntary supply arrangements late in a monthly allocation cycle if, for any reason, some portion of the supply reallocation plans made earlier in that allocation cycle should fail to be implemented by the oil companies; and (2) a recent modification to the IEA's established procedures for resolving trade data discrepancies which, from the available data, may appear to exist among IEA countries, or among oil companies in IEA countries, also will be reviewed.

As in previous IEA allocation systems tests, Reporting Companies will participate in AST-5 in several ways. First, Reporting Company employees will staff the ISAG in Paris. Second, Reporting Companies will provide the IEA and the ISAG with historical data on their imports, exports, indigenous production, and inventories for the period covered by the test. Finally, Reporting Companies will simulate the carrying out of certain hypothetical supply reallocation measures; in this connection, Reporting Companies may discuss with the IEA, the ISAG and other Reporting Companies, information or data which involves or may involve confidential or proprietary information or data, for the purpose of developing and implementing suitable hypothetical reallocation measures.

Section 5(b)(1) of the Voluntary Agreement conveys antitrust protection to the participating oil companies when, prior to an actual emergency, they take part in IEA allocation systems tests; this allows them to simulate in a systems test all of the kinds of supply activities which would take place in a real emergency. The need for an antitrust approval letter in connection with such a test arises because of the possibility that company confidential or proprietary information or data may be disclosed in the course of the test. On this subject, section 5(b) (2) of the Voluntary Agreement provides that disagregated, confidential or proprietary information or data may be disclosed by the companies in a test only to the extent approved by the Secretary of Energy, after consultation with the Secretary of State, with the concurrence of the Attorney General after he has consulted with the Federal Trade Commission. The purpose of a test approval letter is to set out the scope of the permission granted for the disclosure of confidential or propietary information or data, establish recordkeeping and reporting requirements, and describe how the U.S. Government will monitor the test.

The Department of Energy, in cooperation with the staffs of the Department of Justice, the Department of State and the Federal Trade Commission, has developed the drafts of the AST-5 approval documents which follow below and which are published today for comment. The first document published herein is a draft letter of approval for U.S. oil companies which are signatories to the Voluntary Agreement to participate in AST-5. This letter sets out the scope of permission granted in AST-5 to participating U.S. oil companies and personnel of these U.S. oil companies for the disclosure of confidential or proprietary information or data in connection with AST-5. The second document published herein, an attachment to the approval letter, is the "operating Procedures and Requirements for Recordkeeping by U.S. Companies in the Fifth Allocation Systems Test (AST-5)," which the U.S. participants will be required to observe in AST-5. DOE's regulations at 10, CFR Part 209, and the regulations of the Department of Justice at 28 CFR Part 56, are applied to AST-5 through these operating procedures and recordkeeping requirements.

The proposed approval letter is similar to that which was issued for the previous allocation systems test held in 1983. *See* 48 FR 20268 (May 5, 1983). However, the operating procedures and recordkeeping requirements used in the last test have been modified to incorporate improvements that have been made in analogous provisions of the most recent draft of a new "plan of action" to implement the IEP during an actual emergency, which provisions

themselves earlier were improved based on experience gained in the previous IEA systems test. Thus, based on the most recent draft plan of action considered by the U.S. oil companies and the appropriate Government agencies, the proposed operating procedures and recordkeeping requirements for AST–5 include definitions of "U.S. Voluntary Agreement participant" and "Covered Foreign Affiliate," and establish recordkeeping requirements and U.S. Government monitoring practices for covered foreign affiliates of U.S. companies, that are different from the requirements and practices applicable to their U.S. parent companies.

DOE has determined that utilization of a verbatim transcript for portions of the test is practicable. Accordingly, as provided in section 252(c)(3) of EPCA, it is contemplated that a transcript will be taken of many of the group sessions during AST–5. In addition, U.S. Government observers will maintain a full and complete record of AST–5 in the form of memoranda, documents and communications logs of U.S. oil company personnel involved in the test.

Comment Procedure

Written comments regarding the proposed approval letter and recordkeeping guidelines will be accepted and considered if received by 4:30 p.m., September 6, 1985. Any person submitting written comments with respect to the letter and recordkeeping requirements should submit ten (10) copies to Samuel M. Bradley, Deputy Assistant General Counsel for International Trade and Emergency Preparedness, Department of Energy, Mail Stop, 6E–079, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. Comments should be identified on the outside of the envelope and on documents submitted with the designation "Proposed Approval Letter and Operating Procedures/Recordkeeping Requirements for AST–5".

Any information or data considered by the person furnishing it to be confidential or proprietary must be so identified and submitted in writing, in one copy only, in accordance with procedures set forth in 10 CFR 205.9(f). Any material not accompanied by a statement of confidentiality will be considered to be non-confidential. The Department of Energy reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Issued in Washington, D.C., August 14, 1985.

J. Michael Farrell,

General Counsel.

Appendix

Proposed letter from the Secretary, United States Department of Energy, to United States Reporting Companies.

1. The International Energy Agency (IEA) will conduct in the near future its Fifth Allocation Systems Test (AST–5), the fifth test of the IEA Emergency Oil Sharing System. The Department of Energy (DOE) considers AST–5 an important part of our preparedness efforts. We hope your company will participate and provide full cooperation to the IEA in this undertaking.

2. This letter sets out guidelines for participation in AST–5 by U.S. oil companies and personnel of U.S. oil companies and provides required approvals for the disclosure or exchange of confidential or proprietary information or data in connection with AST–5, as required by the Voluntary Agreement and Plan of Action to Implement the International Energy Program ("Voluntary Agreement"), 2 CCH Federal Energy Guidelines, Paragraph 15,845. Participation by U.S. companies is governed by section 252 of the Energy Policy and Conservation Act (EPCA), DOE regulations at 10 CFR Part 209, Department of Justice regulations at 28 CFR Part 56, and the Voluntary Agreement.

3. The primary objective of AST–5 is to continue the program of periodic training of personnel of participating IEA governments, oil companies and the IEA Secretariat in the data systems and emergency oil allocation procedures developed to implement the provisions of the Agreement on an International Energy Program (IEP) (TIAS 8278, November 18, 1974), which are delineated in the Emergency Management Manual (EMM) and the Industry Supply Advisory Group/Secretariat Operations Manual (ISOM). AST–5 also will include certain aspects of the Emergency Oil Sharing System that have not been tested previously: it will consider the ability of the sharing system to deal with the additional burden of matching voluntary offers of oil that, for unspecified reasons, have not been implemented subsequent to the initial matching process; and a recent modification to the procedure for resolving trade data discrepancies among countries and companies will be reviewed.

4. AST–5 will begin with the sending of a disruption telex on Friday, September 20, 1985, and will continue for approximately eight weeks. It will consist of one full and one curtailed allocation cycle. Prior to the completion of the full regular cycle commencing October 1, 1985, a second disruption telex will be released by the IEA Secretariat. Questionnaire A (QA) and Questionnaire B (QB) data will be submitted and allocation rights and allocation obligations will be calculated by the Secretariat and relayed to countries and companies for each cycle. Following communication of allocation rights and allocation obligations for the second cycle, the test will cease as far as IEA-directed activity is concerned. Thus the large majority of ISAG representatives will be involved for less than four weeks, although a few ISAG representatives may remain until the completion of the test.

5. Industry will participate in several ways. First, industry representatives will staff the ISAG; the ISAG, with the IEA's Allocation Coordinator, Secretariat and a Standing Group on Emergency Questions Emergency Group composed of representatives of IEA member countries, will comprise the IEA Emergency Management Organization at IEA headquarters in Paris, France, which will conduct the test. Second, Reporting Companies will submit QA and other data to the IEA Secretariat and the ISAG, and individually will discuss these data with the IEA Secretariat and with the ISAG to the extent required for the test; their affiliates will make similar data submissions and have similar individual discussions with the NESOs of the participating countries in which they operate. Third, Reporting Companies will propose and simulate the carrying out of certain hypothetical supply reallocation measures called "Type 2" allocation by the IEA; in this connection, Reporting Companies may communicate with other Reporting Companies (a) for the purpose of identifying suitable suppliers or receivers of oil to formulate "closed loop" Type 2 offers, (b) to enable Reporting Companies to work out logistics needed to implement Type 2 offers, or (c) to undertake needed subsequent modification of Type 2 offers which have previously been accepted by the Allocation Coordinator. Finally, it is our understanding that some NESOs may have employees of Reporting or Non-Reporting Companies or their affiliates as members or advisors.

6. In Paris, the test will be conducted, for notice purposes under the Voluntary Agreement, as a single meeting of ISAG carried out in accordance with Section 5 of the Voluntary Agreement. In addition to individual tasks and contacts with the Secretariat by ISAG members, working

sessions will include meetings of all ISAG members and smaller group meetings of several ISAG members, as well as joint working sessions of a few ISAG members assigned to solve particular problems. The ISAG Manager or his designee may meet with members of the AST–5 Control Group, consisting of the Chairman of the Industry Advisory Board, the Chairman of the Standing Group on Emergency Questions and the IEA Executive Director, or with members of the Standing Group on Emergency Questions Emergency Group. A verbatim transcript of certain sessions will be made under the supervision of U.S. Government observers; such transcripts will be available for review by participants in the sessions so transcribed, or their counsel, either during the test or later. For some ISAG sessions, a full and complete record will be prepared by U.S. Government observers who are present. A full and complete record of other communications will be maintained by the U.S. test participants. More detailed recordkeeping requirements, along with operating procedures, are set out in the attachment to this letter. These operating procedures and recordkeeping requirements, which have been prepared in cooperation with the Department of State, the Department of Justice and the Federal Trade Commission, are to be considered an integral part of this letter of approval. (The operating procedures and recordkeeping requirements have been based on recent drafts of a possible new "plan of action" to implement the IEP, which themselves reflect revisions in the procedures and requirements used in AST–4.)

7. In order to carry out the test, it will be necessary for Reporting Companies to provide the IEA Secretariat and the ISAG with certain information or data on IEA questionnaire forms and formats, and to submit voluntary offers to supply or receive reallocated oil, and they may have to engage in other communications with the IEA Secretariat or ISAG to clarify, amplify, correct, or supplement such data submissions and voluntary offers. Further, ISAG members may have to exchange this and other information or data among themselves, with members of the IEA Secretariat, with IEA Reporting Companies, and with NESOs. Access to such information or data and to ISAG discussions and work sessions will be open to official observers from the European Communities and IEA member countries authorized by the IEA to be present at the test. Aside from the IEA questionnaire and format data and information as to voluntary offers, much of the data or information will be available from public sources. Some such information or data, while actually public information, may not be definitely known to be publicly available by those exchanging it or it may be considered confidential by some companies. Some of the data or information needed to be provided or exchanged clearly will be confidential or proprietary.

8. Accordingly, approval under section 5(b) of the Voluntary Agreement is hereby given to Voluntary Agreement participants (including their foreign affiliates which are covered pursuant to Section 9(b)(3) of the Voluntary Agreement) and their employees engaged in AST–5 to submit and exchange the types of information or data listed below which involve or might involve disclosure of confidential or proprietary information or data. However, this approval is granted only to the extent that the submission or exchange of these types of confidential or proprietary information or data is necessary during the first cycle, and until allocation rights and allocation obligations have been determined and communicated by the IEA Secretariat in the second cycle, in order to implement the oil allocation procedures of the IEP as guided by the EMM, the ISOM, and the AST–5 Test Guide, and to meet specific problems as they arise during AST–5. Approval is further limited to information or data covering the historical period October 1984 through January 1985. This letter neither approves nor disapproves the activities of company employees serving on NESOs or any communication between a Voluntary Agreement participant and a NESO. Under these limitations, and those set forth in paragraphs 9, 10, 11, 12 and 13, the following types of information or data which may involve the disclosure of confidential or proprietary information or data may be communicated by or to Voluntary Agreement participants or their employees in carrying out AST–5:

(a) Disaggregated October 1984 through January 1985 Questionnaire A or B data submitted during AST–5 by Reporting Companies or NESOs, *i.e.*, data as required by the Questionnaire A and B reporting instructions in effect for AST–5 as further defined in the AST–5 Test Guide, and ISAG work formats derived from such data, including:

(i) Indigenous production of crude oil, natural gas liquids (NGLs) and feedstock;

(ii) Imports and exports of crude oil, NGLs and feedstock;

(iii) Petroleum product imports and exports (in crude oil equivalents);

(iv) International marine bunkers;

(v) Inventory levels and changes; and

(vi) Stocks at sea.

This data base will be amended by Reporting Companies, coordinating with their affiliates as required, and by NESOs for Non-Reporting Companies operating within their boundaries, based on the Secretariat's disruption telex at the beginning of each cycle, and as elaborated during each cycle by updating telexes from the Secretariat. Reporting Companies may mask data if they so choose in accordance with the procedures established in the AST–5 Test Guide. Reporting Companies will rearrange their international supply plans to reflect the reduced availability of certain types of crude oil as well as certain other restrictions as indicated in the disruption telex and updating telexes and will report the new supply plan on QA submitted to the Secretariat. In addition, each NESO will compile QB from information or data received from Reporting Companies or their affiliates operating within its country and by simulating comparable supply effects for the Non-Reporting Companies operating within its country and will submit QB to the Secretariat. Some of the data submitted by companies will be unaffected by the assumed supply disruption and will therefore be actual data. Such actual data are likely to include the following:

—Inventory level changes in October 1984 and inventories at the end of October 1984 from which inventories as of October 1, 1984, can be derived (see paragraph 9(b) with respect to provision of this data to the ISAG);

—indigenous crude/NGL production through all four months in the data base; and

—international marine bunkers.

(b) Capability of a refinery to process crude oil or specific crude oils, and the capability of a pipeline, dock or terminal or other storage or transit facility to receive, store, or throughput crude oil or specific crude oils or petroleum products or specific petroleum products.

(c) Capability of a port, installation, or waterway to receive or move vessels of various sizes and configurations.

(d) The availability of tankers and barges, including their location, routing, size, specifications and operating characteristics.

(e) Main characteristics of crude grades and product specifications.

(f) Actual and estimated historical production data on crude oils and NGLs for individual countries.

(g) Historical country supply patterns for crude oil, NGLs and petroleum products, *e.g.*, imports by country of origin, exports to country of destination, and inventory profiles.

(h) Specific refinery considerations that prevent acceptance or release of certain crudes, *e.g.*, the inability of a refinery to process specific types of crude oil or to make certain specialty products for which the crude oil is particularly suited; the inability of a type of crude oil to meet certain product specifications; hazards to refinery operations which processing of a particular type of crude oil might cause; or the need for a refinery to operate at a minimum throughput level.

(i) Identification of supply logistics problems relating to certain countries or regions of countries.

(j) Identification, without disclosure of specific costs, prices or financial information, or other underlying facts, of the existence of certain individual company considerations which would preclude or make impracticable a proposed movement of oil, involving:

(i) Commercial policy;

(ii) Supply or transportation factors;

(iii) Affiliate, third-party, concessional or other contractual arrangements; or

(iv) Constraints relating to actions or policies of governments.

(k) Identification of differences between the crude oil and petroleum product supply mix and demand for products in certain countries or regions of countries.

(l) Information or data concerning voluntary offers made by Reporting Companies or Non-Reporting Companies, or the implementation of Type 2 transactions.

(m) Clarification, amplification, correction, explanation or supplementation of the types of information or data specified in subparagraphs (a) through (l), provided that this subparagraph (m) does not supersede any specific prohibition contained in this approval letter.

(n) Such additional types of confidential or proprietary information or data as may be needed in implementing IEA oil allocation as guided by the EMM, the ISOM, and the AST–5 Test Guide, (i) if a communication of such types of information or data is approved in advance by the U.S. Government representatives at the allocation site or (ii) if communication of such types of information or data is needed on a timely basis and receipt of such advance approval is not practicable, provided, in the latter case, that prompt written notice of such communication together with a description of the circumstances necessitating such communication without such advance approval must be given to the representatives of the Secretary of Energy, the Attorney General and the Federal Trade Commission at the allocation site. Approval for the continued communication of such types of information or data can be terminated prospectively by the Department of Energy representative or the Department of Justice representative at the allocation site.

9. In order to carry out the test, these information and data must be provided and exchanged on a disaggregated basis and the finding required by section 5(b)(2) of the Voluntary Agreement in this regard is hereby made, with the following limitations:

(a) During the first test cycle, U.S. ISAG personnel will examine QAs and QBs to detect possible errors. After detecting a possible error, a U.S. ISAG member may discuss such possible error with Secretariat personnel, members of ISAG, the Reporting Company or NESO which transmitted the possibly erroneous QA or QB data and the Reporting Company whose data is included in a QB and which data is thought to be such a possible error. U.S. ISAG personnel may not discuss suspected errors with any other persons. The U.S. Government representatives at the allocation site shall be notified in advance of the time and place of any discussion of suspected errors among ISAG personnel in which U.S. members of ISAG participate. When responding to an inquiry from the ISAG member regarding such errors, a Voluntary Agreement participant may only confirm the accuracy of the reported data, provide corrected data, or discuss with ISAG members whether the reported data accurately reflect the cycle's reallocation and the cycle's disruption scenario. Any further explanation of such errors may only be provided to personnel of the IEA Secretariat.

(b) Company-specific opening inventory data as of October 1, 1984, data showing inventory level changes in October 1984 and the "check total" for October 1984 as reflected in QAs and QBs shall not be made available to ISAG personnel on a routine basis, but only as necessary to solve specific supply problems when they arise. A U.S. Government observer present at the AST–5 test site may give written approval for disclosure of such data, upon receipt and consideration of a written request from the ISAG Manager or his delegate stating that access to such data is necessary.

(c) It is understood that the IEA Secretariat will not permit any disaggregated QA data of a Reporting Company, other than QA data submitted by the Reporting Company in AST–5, to be made available to any other Reporting Company or ISAG representative thereof.

(d) The Department of Energy representative, with the concurrence of the Department of Justice representative, after consultation with the Federal Trade Commission representative at AST–5, may terminate this approval as it applies to the conduct of any supply analysis by U.S. ISAG personnel if such analysis may lead to unwarranted disclosure of competitively sensitive supply or logistical information, or have any other unwarranted anticompetitive effect.

10. This approval does not extend to provision or exchange of:

(a) Confidential or proprietary crude oil or petroleum product prices or related commercial terms;

(b) Company costs or market shares of crude oil or petroleum products (other than those which can be derived from the QA or QB data submitted during AST–5); or

(c) Individual company information regarding overall long-term programs for investment, divestment, refining, operating, transportation or marketing.

11. A Voluntary Agreement participant will be permitted to communicate confidential or proprietary information or data with another Reporting Company only after first cycle allocation rights and allocation obligations have been determined and communicated, and continuing until its second cycle QA has been submitted to the IEA Secretariat, and only to enable it to formulate "closed-loop" voluntary offers, to arrange the logistics needed to implement Type 2 offers, and to modify previously approved voluntary offers if necessary, for the purpose of carrying out first cycle supply reallocation measures. Type 2 transactions are those intended to balance allocation rights and allocation obligations and to alleviate differences between product demand and the available supply mix. These communications will be limited to discussions of the quality and volumes of oil that would be involved in a voluntary offer and the timing or logistics involved in effecting the physical transfer of such oil. No other confidential or proprietary information or data shall be discussed or exchanged. Prices or values of the oil shall not be discussed. Type 1 transactions, which for the most part are transactions made by a company to satisfy its own commercial objections in response to an oil supply emergency situation, will be

assumed to have occurred without communications between a Voluntary Agreement participant and another Reporting Company during AST–5.

12. Participation in AST–5 does not create an obligation on U.S. Voluntary Agreement participants or their employees serving on the ISAG to provide or exchange any information or data which may be confidential or proprietary.

13. In no case shall an employee of a Voluntary Agreement participant supply to his company or to any other person, any confidential or proprietary information or data obtained as a consequence of his membership in the ISAG or participation in any NESO, except such information or data as is necessary to be supplied in the course of carrying out AST–5 or related NESO activities. No Voluntary Agreement participant employee serving on the ISAG may remove any documents related to the test from the IEA premises, except as authorized in writing by a U.S. Government representative attending the test.

14. Each Voluntary Agreement participant shall provide one copy of its QA submitted to the IEA Secretariat in QA format as distinguished from telex form, to:

Ms. Catherine M. Keane, Voluntary Agreement Coordinator, International Affairs, IE–132, Department of Energy, Forrestal Building, Room 7G–076, 1000 Independence Avenue, SW., Washington, D.C. 20585; Telex No. 710–822–0176; TWX No. 710–822–0001

Ms. Melanie Stewart Cutler, Energy Section, Antitrust Division, Department of Justice, Post Office Box 14141, Washington, D.C. 20044; Telex No. 710–822–1907, TWX No. 710–822–1907

15. Any confidential or proprietary information or data exchanged or furnished pursuant to the test to or by a Voluntary Agreement participant or its employee serving on the ISAG shall be supplied by them, upon request, to U.S. Government observers from the Department of Energy, Department of State, Department of Justice or Federal Trade Commission.

16. This approval may be modified or revoked in writing by the Department of Energy representative, with the concurrence of the Department of Justice representative in consultation with the Federal Trade Commission representative, if developments during AST–5 indicate that modification or revocation is warranted. Any modification or revocation shall be in writing and conveyed to all participants in the Voluntary Agreement and the ISAG Manager or his designee. No modification or revocation shall have retroactive effect.

17. This approval of U.S. company participation in the test and of the provision of certain data and information (including the need to provide it in disaggregated form) has been the subject of consultation with the Department of State and has been concurred in by the Department of Justice, after consultation with the Federal Trade Commission, all as required by the Voluntary Agreement. Copies of correspondence reflecting our consultation with the Department of State, and the Department of Justice's concurrence in our approval, after consultation with the Federal Trade Commission, are annexed.

Operating Procedures and Requirements for Recordkeeping by U.S. Companies in the Fifth Allocation Systems Test (AST–5)

1. Introduction

The following operating procedures and requirements for recordkeeping are in further implementation of the existing U.S. recordkeeping requirements in section 252 of EPCA, 10 CFR Part 209, and 28 CFR Part 56, and apply to the Fifth IEA Allocation Systems Test (AST–5). These operating procedures and requirements apply, *inter alia*, to U.S. Voluntary Agreement participants and their employees serving on the ISAG who will be participating in the test at the Test Site. These requirements also apply to Covered Foreign Affiliates to the extent set forth in sections 7, 8 and 9.

If experience indicates the need, the U.S. Government observers at the Test Site will have discretion to allow alternative operating procedures and recordkeeping requirements consistent with section 252 of EPCA and existing regulations thereunder.

2. Definitions

For purposes of these procedures and requirements the following definitions apply:

(a) "Communication" means any written or unwritten disclosure, provision or exchange of information or data relating to the carrying out of AST–5, subject to the limitation contained in (b).

(b) "Communication" and "document" exclude the communication or documentation of administrative, procedural, or ministerial information or data (*e.g.*, scheduling of meetings, personnel assignments, arranging for support services, or messages involving merely routine administration of simulated petroleum sale or exchange transactions), communications or documents which are subject to attorney-client privilege (but see section 8(c)(iv)), and communications with or the documentation of communications with U.S. Government observers at the allocation site (but see section 8(c)(iii)).

(c) "Test site" means that space in IEA headquarters designated by the Allocation Coordinator as the work area in which AST–5 shall be conducted.

(d) "Test meeting" means the following group meetings held at the test site (with or without IEA Secretariat participation):

(i) Meetings of the entire ISAG;

(ii) Meetings of the ISAG's Country Supply, Supply Coordination or Supply Analysis subgroups; and

(iii) Meetings of the ISAG Manager or Deputy Manager and ISAG subgroup heads.

(e) "Test site communication" means and unwritten face-to-face communication occurring on, or telephonic communication received at or sent from, the test site, other than in a test meeting.

(f) "Off-site communication" means any unwritten face-to-face communication which does not occur on, or any telephonic communication which is neither received at nor sent from, the test site.

(g) "U.S. Voluntary Agreement participant" means any oil company whose participation in the Voluntary Agreement has been approved pursuant to section 9(b)(1) of the Voluntary Agreement, and also any affiliate of that oil company, organized under the laws of the United States (or any political subdivision thereof), that is covered pursuant to section 9(b)(3) of the Voluntary Agreement.

(h) "Covered Foreign Affiliate" means any affiliate of a U.S. Voluntary Agreement participant that is organized under the laws of a jurisdiction other than the United States (or any political subdivision thereof) and that is covered pursuant to section 9(b)(3) of the Voluntary Agreement.

3. U.S. Government Monitoring and Recordkeeping at the Test Site

(a) To the extent practicable, test activities of ISAG members shall be conducted at the test site, while a U.S. Government observer is in attendance at the test site. A U.S. Government observer must be present throughout all test meetings in which a Voluntary Agreement participant employee serving on the ISAG participates, and may elect to be present during any other test activities in which a Voluntary

Agreement participant employee member of ISAG participates, including communications (except communications between an individual Voluntary Agreement participant and his legal counsel). It is intended that U.S. Government observers will be in attendance continuously at the test site to monitor test meetings and communications by Voluntary Agreement participant employees serving on the ISAG during such regular hours as ISAG adopts, and at any extraordinary hours if given reasonable notice. Voluntary Agreement participant employees serving on the ISAG shall provide advance notice whenever they anticipate that test meetings or test site communications will occur during extraordinary hours, or that test activities will occur outside of the test site.

(b) A U.S. Government observer shall be responsible for keeping a written record of each test meeting in which a Voluntary Agreement participant employee serving on the ISAG participates, or for ensuring that a verbatim transcript is made. Failure of the U.S. Government to maintain a full and complete written record shall not vitiate the antitrust defense accorded by section 252 of EPCA for a Voluntary Agreement participant or its employees unless such failure is due to the willfull act of the Voluntary Agreement participant's employee serving on the ISAG or of the Voluntary Agreement participant.

(c) Unwritten communications of Voluntary Agreement participant employees serving on the ISAG which relate to test activities may occur outside of the test site only when circumstances make an off-site communication necessary, *i.e.*, when a need for an immediate communication arises unexpectedly or after normal working hours or otherwise makes a return to the test site impracticable or unreasonable, or when time zone differences involved in necessary communications otherwise would require early morning arrival or late night stay at the test site.

4. Unwritten Communications, Outside of Test Meetings, Involving Voluntary Agreement Participant Employees Serving on the ISAG

(a) These recordkeeping requirements for unwritten communications apply to test site communications and off-site communications by or to Voluntary Agreement participant employees serving on the ISAG, including communications with the IAB, but excluding communications with the IEA Secretariat, members of the SEQ-EG, or the U.S. NESO.

(b) Except when a U.S. Government observer is present, a Voluntary Agreement participant employee serving on the ISAG shall make a full and complete record of any test site communication or off-site communication, by means of entering in a standarized log the date, time, identity of the parties (by name and organization) and a description of the substance of the communication (including, *e.g.*, a description of the transaction or information or data discussed, including identification of any problem involved and any conclusions reached or recommendations made). The entry also shall state the special circumstances which necessitated an off-site communication, or a test site communication despite the absence of a U.S. Government observer from the test site, if such absence was known to such employee at the time of such communication.

(c) When a Voluntary Agreement participant employee serving on the ISAG has been assigned to a joint work session to solve a specific identified problem, the overall subject matter of which already is contained in a full and complete record of a test meeting, or the result of which work session will be reported at a meeting where a full and complete record will be maintained then notwithstanding subsection (b), the record of such session to be kept by such employee need only include the date, time and identity of the parties and a brief indication of the substance of the discussion during the work session, with a reference to the test meeting where it was more fully discussed.

(d) when more than one Voluntary Agreement participant employee serving on the ISAG is involved in a communication, the employees may designate who shall make and supply the record. Non-Voluntary Agreement participant employees serving on the ISAG may furnish the required records of communications with Voluntary Agreement participants and with Voluntary Agreement participant employees serving on the ISAG.

5. Disposition of Records by Voluntary Agreement Participant employees Serving on the ISAG.

(a) Each Voluntary Agreement participant employee serving on the ISAG shall provide to the U.S. Government observers at the tests site, within three working days of the first day it covers, a copy of any log kept pursuant to section 4(b), and within one working day of the occurrence, a copy of any other written communication which such employee prepares or receives that relates to test activities.

(b) The requirement imposed by paragraph (a) of this Section may be waived by the U.S. Government observers at the test site, to the extent that the IEA Secretariat will provide copies of such communications to the U.S. Government observers.

6. U.S. Government Monitoring at Voluntary Agreement Participant Offices

(a)(i) U.S. Government observers shall be permitted to interview all U.S. Voluntary Agreement participant employees engaged in carrying out the test, by telephone, and at the offices of, and upon reasonable advance notice to, the U.S. Voluntary Agreement participant involved. Any interviewed employee may have counsel present.

(ii) U.S. Government observers shall be permitted to interview all Covered Foreign Affiliate employees engaged in carrying out the test, by telephone, and at the offices of the parent company U.S. Voluntary Agreement participant of such Covered Foreign Affiliate or, at the election of such Covered Foreign Affiliate and such parent company, at the offices of such Covered Foreign Affiliate, upon reasonable advance notice to such parent company and to such Covered Foreign Affiliate. Any interviewed employee may have counsel present.

(b) U.S. Government observers shall be permitted to examine and copy, at U.S. Voluntary Agreement Participant headquarters during normal business hours and upon reasonable notice to the U.S. Voluntary Agreement Participant Company involved, any communication, document or other information source related to test activities which is not subject to attorney-client privilege, and which is in the possession or custody of such U.S. Voluntary Agreement participant, including any Covered Foreign Affiliate records forwarded to such U.S. Voluntary Agreement participant to section 8(c)(ii).

7. Recordkeeping Requirements for Voluntary Agreement Participants Other Than Employees Serving on the ISAG

(a) Each U.S. Voluntary Agreement participant and each Covered Foreign Affiliate promptly shall make or maintain a full and complete record of all of the following unwritten communications:

(i) Except as provided in section 7(d), communications with individuals serving on the ISAG (including any of its

own employees serving on the ISAG); and

(ii) Communications with another company (not including any affiliate).

(b) Records of such unwritten communications of a U.S. Voluntary Agreement participant should be made by the U.S. Voluntary Agreement participant in the manner described in section 4(b) for Voluntary Agreement participant employees serving on the ISAG.

(c) Records of such unwritten communications of a Covered Foreign Affiliate may be made in the manner described in section 4(b) or, at the election of the Covered Foreign Affiliate, may consist of a bi-weekly summary:

(i) Identifying (A) each individual serving on the ISAG with whom the Covered Foreign Affiliate has had a communication, (B) each nonaffiliated company with whom the Covered Foreign Affiliate has had a communication, and (C) each affiliate with whom the Covered Foreign Affiliate has had a communication;

(ii) Describing with particularity each agreement or other arrangement entered into with any such other company or affiliate, and each transaction simulated to carry out the test, setting forth all significant terms, including volume, crude or product type, origin, destination and time of delivery; and

(iii) Describing in summary terms, for each category of communications listed in subparagraph (i) of this subsection, the substance thereof, to the extent not already disclosed pursuant to subparagraph (ii) of this subsection.

A bi-weekly summary may be made by the Covered Foreign Affiliate or, at the election of the Covered Foreign Affiliate and its parent company U.S. Voluntary Agreement participant, by such parent company on behalf of the Covered Foreign Affiliate.

(d) A Voluntary Agreement participant need not make a record pursuant to this Section of a communication with any individual serving on the ISAG, when such Voluntary Agreement participant has agreed with such individual that the record of the communication will be made by and provided to U.S. Government by such individual in accordance with section 5(a), or provided by the IEA Secretariat in accordance with section 5(b).

(e) To the extent that any information required to be set forth pursuant to section 7(a) can readily be derived from a document deposited pursuant to section 8, a specific cross-reference to such document shall suffice.

8. Disposition of Records by Voluntary Agreement Participants

(a)(i) Each U.S. Voluntary Agreement participant shall deposit with the U.S. Government, in accordance with this Section, a copy of each record required to be made by it under section 7(a) which has not previously been furnished to the U.S. Government, and of:

(A) Each written communication with the ISAG (including any employee of the U.S. Voluntary Agreement participant serving on the ISAG); and

(B) Each written communication with another company (not including any of the U.S. Voluntary Agreement participant's affiliates), and each document relating to the test and setting forth any agreement or arrangement with any other company or with any affiliate, with respect to any Type 2 transaction.

Any portions of such records which are believed not to be subject to public disclosure should be specified.

(ii) Each Covered Foreign Affiliate (or, at the election of the Covered Foreign Affiliate and of its parent company U.S. Voluntary Agreement participant, such parent company) shall deposit with the U.S. Government, in accordance with this Section, a copy of each record required to be made by the Covered Foreign Affiliate under section 7(a) and of each document relating to the test and setting forth any agreement or arrangement between the Covered Foreign Affiliate and another company (including an affiliate) with respect to any Type 2 transaction. Any portions of such records which are believed not to be subject to public disclosure should be specified.

(b) Records of unwritten communications of U.S. Voluntary Agreements participants shall be sent to the U.S. Government within twenty-four hours after the close of the week (ending Saturday) of the occurrence of the communications recorded. In the case of communications of Covered Foreign Affiliates, this period shall be extended to two weeks. If possible, copies of written communications by a U.S. Voluntary Agreement participant shall be sent to the U.S. Government by the U.S. Voluntary Agreement participant simultaneously with and by the same means of transmission used to send the original. Copies of all other written communications or documents shall be sent to the U.S. Government within seven days (or in the case of communications or documents of Covered Foreign Affiliates, fourteen days) after the close of the week (ending Saturday) in which they occur.

(c)(i) Each U.S. Voluntary Agreement participant shall maintain, for a period of five years, a copy of each record required to be deposited pursuant to section 8(a), and of all other documents relating to the carrying out of the test, including all such intracorporate documents. If so requested by the U.S. Government observers in connection with an examination pursuant to section 6(b), such Voluntary Agreement participant, within two weeks of such request, shall forward a copy of each requested record to an appropriate office at company headquarters, where the records shall be maintained separately from other company records until completion of such examination.

(ii) Each Covered Foreign Affiliate shall maintain, for a period of five years, a copy of each record required to be deposited pursuant to section 8(b) and copies of all other documents relating to the carrying out of the test, including all such intracorporate documents. If so requested by the U.S. Government observers in connection with an examination pursuant to section 6(b), such Covered Foreign Affiliate, within four weeks of such request, shall forward a copy of each requested record to an appropriate office at the headquarters of such Covered Foreign Affiliate's parent company U.S. Voluntary Agreement participant, where the records shall be maintained until completion of such examination.

(iii) Notwithstanding section 2(b), each U.S. Voluntary Agreement participant shall maintain for a period of one year, a copy of each document relating to the carrying out of the test which involves administrative, procedural, or ministerial information or data, as described in section 2(b). Such documents shall be maintained separately from the records described in section 8(c)(i) and (ii), and from other company records, and upon request, shall be included among the records forwarded to the appropriate company office pursuant to section 8(c)(i) and (ii). Such documents may be subject to U.S. Government examination during and after the test process, as provided elsewhere in these recordkeeping requirements.

(iv) Notwithstanding section 2(b), copies of all documents relating to the carrying out of the test which are subject to attorney-client privilege shall be included among the records forwarded to the appropriate company office pursuant to section 8(c)(i) and (ii). Upon request, the Voluntary Agreement participant shall identify those records which are subject to attorney-client privilege. Those records which are not

subject to attorney-client privilege may be subject to U.S. Government examination during and after the allocation process, as provided elsewhere in these recordkeeping requirements.

9. Reports of Actions Taken

(a) Each Reporting Company U.S. Voluntary Agreement participant shall report to the Departments of Energy and Justice and the Federal Trade Commission, actions simulated by it and its covered affiliates to carry out Type 2 transactions. Communications with respect to developing or implementing a voluntary offer are to be reported as provided in sections 7 and 8.

(b) A report shall be submitted within seven days (or in the case of actions by Covered Foreign Affiliates, fourteen days) of the end of the week (ending Saturday) in which the action was simulated.

(c) Each Type 2 transaction that is implemented or planned to be implemented shall be described with particularity, including a statement of the volume, crude or product type, country of origin, original destination and recipient, new destination and recipient, time of delivery, and other significant terms involved. To the extent that a record submitted pursuant to Section 8 already discloses such information, a cross-reference to a specific record will suffice. In other respects, the style and content of the report are left to the discretion of the individual Reporting Company. It can be submitted in any fashion that the Reporting Company believes will reflect what it and its covered affiliates have done.

(d) Each Reporting Company is invited (but not required) to comment in such reports on these operating procedures and recordkeeping requirements, with respect to their use in systems tests or in a real emergency.

(e) A Reporting Company Voluntary Agreement participant may submit a similar report to the IEA Secretariat. The Reporting Company simultaneously should send a copy of any such report to the Departments of Energy and Justice and the Federal Trade Commission.

10. Reporting Addresses

Reports and records required hereunder to be sent to U.S. Government agencies should be addressed to:

Ms. Catherine M. Keane, Voluntary Agreement Coordinator, International Affairs, IE-132, Department of Energy, Forrestal Building, Room 7G-076, 1000 Independent Avenue, SW., Washington, D.C. 20585, Telex No. 710-822-0176, TWX No. 710-822-0001

Ms. Melanie Stewart Cutler, Energy Section, Antitrust Division, Department of Justice, Post Office Box 14141, Washington, D.C. 20044, Telex No. 710-822-1907, TWX No. 710-822-1907.

Mr. Harvey Blumenthal, Federal Trade Commission/CS-4, Washington, D.C. 20585

[FR Doc. 85-19783 Filed 8-16-85; 8:45 am]
BILLING CODE 6450-01-M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the following collections to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATES: Last Notice published Tuesday, July 23, 1985 (50 FR 30003).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Data Collection Services Division (DCSD), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252-2308

Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7313

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., August 14, 1985.

Yvonne M. Bishop

Director, Statistical Standards, Energy Information Administration.

DOE Forms Under Review by OMB

Form Nos.	Collection title	Type of request	Response frequency	Response obligation	Response description	Estimated number of respondents	Annual respondent burden	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
EIA-800 to 804; 806; 810 to 814; 816 to 818; 820; and 825.	Petroleum Supply Reporting System (PSRS) Package.	Revision	Weekly monthly, annually, triennially.	Mandatory; Voluntary (806 only).	Operators of petroleum refining facilities, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, and tankers and barges.	4,111	63,176	The Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude petroleum, petroleum products, and natural gas liquids. These data are published by the EIA.

DOE FORMS UNDER REVIEW BY OMB—Continued

Form Nos.	Collection title	Type of request	Response frequency	Response obligation	Response description	Estimated number of respondents	Annual respondent burden	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
EIA-846	Manufacturing Energy Consumption Survey (Pilot test).	New	One-time	Mandatory	Manufacturing establishments in SIC-20-39.	100	800	EIA-846 will collect data on the consumption of energy sources and the fuel-switching capability of establishments in the manufacturing sector. This data collection effort constitutes a pilot test of EIA-846 and no data will be published.

[FR Doc. 85-19782 Filed 8-16-85; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-670-000, et al.]

Commonwealth Edison Co., et al.; Electric Rate and Corporate Regulation Filings

August 12, 1985.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER85-670-000]

Take notice that Commonwealth Edison Company on August 2, 1985, tendered for filing proposed changes in its FERC Electric Service Tariff No. 2, an Interconnection Agreement, dated July 20, 1956, between Commonwealth Edison Company and Indiana & Michigan Electric Company.

The proposed change, which the parties have agreed to, provides for a revision in time periods previously agreed upon for the transmission of power through the Indiana & Michigan system as related to the capacity allocations to Commonwealth Edison from the Ludington Pumped Storage Plant.

Copies of the proposed rate schedule changes were served upon the Illinois Commerce Commission, Springfield, Illinois, the Public Service Commission of Indiana, Indianapolis, Indiana and Michigan Public Service Commission, Lansing, Michigan.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Consumers Power Company

[Docket No. ER85-675-000]

Take notice that Consumers Power Company ("Consumers") on August 5, 1985, tendered for filing Consumers' Amendment No. 3 to the Agreement For Sale of Portion of Generating Capability of Ludington Pumped Storage Plant with Commonwealth Edison Company (Commonwealth) and Indiana & Michigan Electric Company (Indiana Company) dated as of June 1, 1971.

Amendment No. 3 extends the time period during which Consumers sells its 51% of two units of generating capability of Ludington by one and four-tenths years (from the former termination date of August 7, 1985 to a new termination date of December 31, 1986). The rate charged for this transaction (a function of the annual fixed charge factor and the actual capital costs of the facilities) is not charged by this amendment. However, the revenue to be received by Consumers during the period from August 7, 1985 through December 31, 1986 will be greater because Consumers is selling its 51% share of the capability of two units rather than one.

Consumers requests waiver of the notice requirements to permit an effective date of July 1, 1985.

Consumers states that copies of the filing were served on Commonwealth, The Detroit Edison Company and the Michigan Public Service Commission.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. The Dayton Power and Light Company

[Docket No ER85-673-000]

Take notice that on August 5, 1985, The Dayton Power and Light Company (DP&L) tendered for filing a Notice of Cancellation of its Service Agreement with the Village of New Knoxville executed pursuant to its FERC Electric Tariff Original Volume 1, Pages 11 and 12.

The filing terminates the Service Agreement by which New Knoxville received full requirements for resale.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. The Detroit Edison Company

[Docket No ER85-674-000]

Take notice that The Detroit Edison Company (Detroit Edison) on August 5, 1985, tendered for filing Amendment No. 3 dated July 1, 1985 between Detroit Edison and Commonwealth Edison Company (Commonwealth) and American Electric Power Service Corporation (American Electric Power) which extends for approximately 1.4 years the sale of a portion of the generating capability of Ludington Pumped Storage Plant by Detroit Edison to Commonwealth under the "Agreement For Sale of Portion of Generating Capability of Ludington Pumped Storage Plant by The Detroit Edison Company to Commonwealth Edison Company," dated June 1, 1971 as amended by agreements dated August 15, 1971 and June 1, 1983 (herein after termed "Agreement as amended"). The Agreement as amended has been denoted The Detroit Edison Company Rate Schedule FERC No. 16.

Detroit Edison states that the amendment No. 3 extends the sale of two units of generating capability of Ludington Pumped Storage Plant 1.4 years from the period August 7, 1973–August 7, 1985 to the period August 7, 1973–December 31, 1986.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No ER85-663-000]

Take notice that on August 1, 1985, Florida Power Corporation (Florida Power) tendered for filing Service Schedule F providing for assured capacity and energy interchange service between Florida Power and the Fort Pierce Utilities Authority. Florida Power states that Service Schedule F is submitted for inclusion as a supplement to the existing contract for interchange service between Florida Power and the Fort Pierce Utilities Authority designated as Florida Power's Rate Schedule FERC No. 100.

Florida Power requests that Service Schedule F be permitted to become effective August 1, 1985 and, therefore, requests waiver of the sixty day notice requirement. Copies of this filing have been served upon the Fort Pierce Utilities Authority and the Florida Public Service Commission.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corporation

[Docket No ER85-676-000]

Take notice that on August 5, 1985, Florida Power Corporation (Florida Power) tendered for filing a contract providing for assured capacity and energy interchange service between Florida Power and Florida Power & Light Company. Florida Power states that the Contract for Assured Capacity and Energy is submitted for filing as a separate contract for interchange service between Florida Power and Florida Power & Light Company. The Contract for Assured Capacity and Energy incorporates by reference the general terms and conditions with respect to interconnected operations which are contained in the Contract for Interchange Service between Florida Power and Florida Power & Light Company.

Florida Power requests that the Contract for Assured Capacity and Energy be permitted to become effective August 5, 1985 and therefore, requests waiver of the sixty day notice requirement. Copies of this filing have been served upon Florida Power & Light Company and the Florida Public Service Commission.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Company

[Docket No ER85-667-000]

Take notice that Florida Power & Light Company (FPL) on August 2, 1985, tendered for filing a document entitled "Amendment Number One to Contract for Interchange Service Between Florida Power & Light Company and City of Homestead, Florida".

FPL states that under the Amendment FPL and City of Homestead, Florida (Homestead) utilize the provisions of the existing Contract for Interchange Service between FPL and Homestead, the parties to establish additional service schedules. FPL states that the additional Service Schedule X provides the parties with the necessary vehicle to better maximize the overall economy of power production in the State of Florida.

FPL respectfully requests that the proposed Amendment be made effective no later than 60 days from the date of filing. According to FPL, a copy of this filing was served upon City of Homestead, Florida.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Gulf Power Company

[Docket No. ER85-664-000]

Take notice that Gulf Power Company on August 2, 1985, tendered for filing a rate schedule constituting an interchange contract between Gulf Power Company and Alabama Electric Cooperative, Inc. The service under the rate schedule is scheduled to commence on August 1, 1985. The interchange contract between Gulf Power Company and Alabama Electric Cooperative, Inc. provides for interconnection at two points between the respective electric systems. The interchange contract provides for emergency assistance, short-term power, transmission service and economy interchange transactions. Charges for such service are to be based on formulary rates set forth in the service schedules accompanying the Interconnection Agreement.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER85-669-000]

Take notice that on August 2, 1985, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing Seventh Revised Sheet No. 5A, superseding Sixth Revised Sheet No. 5A (Index of Purchasers) of Pacific's FERC Electric Tariff, Original Volume No. 3 (Tariff), an Interconnection Agreement (Agreement) and Service Schedule A (Schedule A) between Pacific and the State of California Department of Water Resources (DWR).

The Agreement provides for interconnection between Pacific and DWR. Schedule A provides for the sale of nonfirm power and energy between Pacific and DWR. Such sales by Pacific to DWR will be in accordance with Service Schedule PP&L-3 under Pacific's Tariff.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of New Mexico

[Docket No. ER85-665-000]

Take notice that on August 2, 1985, Public Service Company of New Mexico (PNM) tendered for filing a Notice of Cancellation of PNM Rate Schedule PFC No. 23, as supplemented.

PNM requests an effective date of July 1, 1985 and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon the United States Department of Energy's Los Alamos Area Manager and upon the New Mexico Public Service Commission.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. South Carolina Electric & Gas Company

[Docket No. ER85-666-000]

Take notice that South Carolina Electric & Gas Company on August 2, 1985, tendered for filing a proposed modification of F.P.C. Schedule No. 33, dated February 14, 1985, agreement between South Carolina Electric & Gas Company and South Carolina Authority.

The modification incoporates the addition of the 230 KV interconnection between South Carolina Electric & Gas Company's Pepperhill Station and South Carolina Public Service Authority's Mateeba Station into the Interchange Agreement dated August 21, 1978.

This modification is proposed to be effective 60 days after filing. South Carolina Electric & Gas Company has sent copies of this filing to South Carolina Public Service Authority.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Public Service Corporation

[Docket No. ER85-672-000

Take notice that Wisconsin Public Service Corporation ("the Company") on August 5, 1985, tendered for filing an executed service agreement to transfer, effective November 16, 1985, its all requirements customer, the Village of Stratford, Wisconsin, from all requirements service under a contract (FERC Rate Schedule Number 39, and the currently effective supplements thereto) to the same service under the company's all requirements tariff, Original Volume No. 2. The filing does not affect the rate charged to Stratford nor the revenues paid by the customer to the company. The company makes this change so that service will be under a tariff which is generally applicable to all customers.

Copies of the filing were served upon Stratford and the Public Service Commission of Wisconsin.

Comment date: August 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of

the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19660 Filed 8-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. OF85-615-000, et al.]

Cogenic Energy Systems Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

August 9, 1985.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Cogenic Energy Systems Inc.

[Docket No. QF85 -615-000]

On July 19, 1985, Cogenic Energy Systems Inc., 307 South Leadbetter Road, Ashland, Virginia 23005, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at the Beachwood Sheraton, 26300 Chagrin Boulevard, Beachwood, Ohio 44122. The facility is a topping cycle cogeneration plan with a power production capacity of 100 kW. It will consist of an internal combustion engine fueled by natural gas with waste heat recovery from both jacket water and hot exhaust gases. The waste heat will be used to heat domestic hot water. Installation is planned to commence July 1, 1985 and completion is scheduled for July 30, 1985.

2. Fritz's Island Sewage Treatment Plant

[Docket No. QF85-636-000]

On August 2, 1985, Fritz's Island Sewage Treatment Plant, c/o Mr. Joseph F. Mitchell, City Engineer, City Hall, 815 Washington Street, Reading, Pennsylvania 19601, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at Fritz's Island Sewage Treatment Plant, Reading, Pennsylvania. The power production capacity of the facility is approximately 200 kW. The facility will consist of an internal combustion engine fueled by digester gas. The heat recovered from the engine will be used to heat the digester.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital 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 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19690 Filed 8-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-1-000, 001]

Alabama-Tennessee Natural Gas Co.; Revised PGA Rate Adjustment

August 12, 1985.

Take notice that on August 5, 1985, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, tendered for filing Fourth Revised Sheet No. 4 as part of its FERC Gas Tariff, First Revised Volume No. 1. This tariff sheet is proposed to become effective August 15, 1985, and Alabama-Tennessee requests that there be granted any necessary waivers of the Commission's Regulations to accomplish this proposed effective date.

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until August 7, 1985.

Alabama-Tennessee states that the purpose of the revised tariff sheet is to reduce Alabama-Tennessee's rates to reflect a reduction in the rates of its principal supplier, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., filed on July 26, 1985, in Docket No. TA85-3-9-000, to be effective August 15, 1985.

Fourth Revised Sheet No. 4 provides for the following rates:

Rate schedule	Rates after current adjustment
G-1:	
Demand	D, $7.53
	D, 06.26¢
Commodity	12.85¢
Gas	279.30¢
SG-1:	
Commodity	21.41¢
Gas	325.75¢
I-1:	
Commodity	16.71¢
Gas	300.20¢

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 protests should be filed on or before August 20, 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. 85-19731 Filed 8-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-15-20-002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

August 12, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on August 5, 1985 tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Eighth Revised Sheet No. 201
Substitute Third Revised Sheet No. 241
Substitute Ninth Revised Sheet No. 201

Algonquin Gas states that such revised tariff sheets are being filed to track revised rates filed by its pipeline supplier Texas Eastern Transmission Corporation ("Texas Eastern"), effective August 1, 1985. Such revised rates reflect a decrease resulting from (i) Texas

Eastern's latest exercise of "market-out" provisions in certain of its gas purchase contracts and (ii) the flow-through of cost reductions Texas Eastern has experienced from one of its major pipeline suppliers, Texas Gas Transmission Corporation. The impact of such cost reductions on Algonquin Gas' rates is a reduction of $0.009/MMBtu in the demand component of its rates and a reduction of $.1089/MMBtu in the commodity component.

The proposed effective date of Substitute Eighth Revised Sheet No. 201 and Substitute Third Revised Sheet No. 241 is August 1, 1985. The proposed effective date of Substitute Ninth Revised Sheet No. 201 is September 1, 1985.

Algonquin Gas also tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1, the following alternate tariff sheets:

Alternate Substitute Eighth Revised Sheet No. 201
Alternate Substitute Third Revised Sheet No. 241
Alternate Substitute Ninth Revised Sheet No. 201

Algonquin Gas states that such alternate tariff sheets are being filed to reflect the rate increase resulting from Texas Eastern's compliance with the Commission's July 19, 1985 Order, in conjunction with the rate reduction proposed by Texas Eastern.

The proposed effective date of Alternate Substitute Eighth Revised Sheet No. 201 and Alternate Substitute Third Revised Sheet No. 241 is August 1, 1985. The proposed effective date of Alternate Substitute Ninth Revised Sheet No. 201 is September 1, 1985.

Algonquin Gas requests that the Commission accept those tariff sheets filed by Algonquin Gas to be effective August 1, 1985 and September 1, 1985 which synchronizes their rates with the underlying rates of Texas Eastern.

Algonquin Gas further requests that it be allowed to pass the effect of Texas Eastern's compliance filing through its Unrecovered Purchased Gas Cost Account (Account No. 191) for the month of July 1985 rather than revise its rates effective July 1, 1985.

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 intervene 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 protests should be filed on or before August 20, 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 filling are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19732 Filed 8-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-44-000]

Armco Inc.; Petition for Adjustment and Interim Relief

August 13, 1985.

On July 19, 1985, Armco Inc. (Armco) filed with the Federal Energy Regulatory Commission a petition for an adjustment pursuant to section 502(C) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3301, et seq.), and Part 385, Subpart K of the Commission's regulations. Armco seeks relief from incremental pricing surcharges under NGPA Title II and Part 282 of the Commission's regulations.

Armco alleges that the imposition of incremental pricing surcharges on its Kansas City facility is resulting in special hardship, inequity, and an unfair distribution of burdens within the meaning of NGPA section 502(c) and that adjustment relief is both necessary and warranted to prevent such results.

Armco states that its steel facility in Kansas City, Missouri, consumes natural gas subject to the incremental pricing program under NGPA Title II. Armco also alleges that the Kansas City facility's total cost of sales and operating expenses, including incremental pricing surcharges, exceed that facility's net sales revenues.

In addition, Armco requests interim relief, pursuant to Section 385.1113 of the Commission's regulations and a waiver of the applicable filing fee, pursuant to 18 CFR 381.106.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must make a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19733 Filed 8-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-668-000]

Cleveland Electric Illuminating Co. et al.; Amendment to Interconnection Agreement

August 12, 1985.

Take notice that on August 2, 1985, the CAPCO Group filed Amendment No. 3, entered into as of the 1st day of July 1984, to the CAPCO Basic Operating Agreement, as amended September 1 1980, which is on file with the Commission and identified by the Rate Schedule numbers shown for each listed company:

	FERC rate schedule No.
The Cleveland Electric Illuminating Company	15
Duquesne Light Company	15
Ohio Edison Company	144
Pennsylvania Power Company	35
The Toledo Edison Company	27

Amendment No. 3 amends the CAPCO Basic Operating Agrement:

1. to transfer the employees of the CAPCO Coordinating Office ("Office") from being carried for administrative purposes on the payroll of The Cleveland Electric Illuminating Company ("Illuminating Company") to the payroll of Ohio Edison Company ("Ohio Edison") and to transfer the responsibility for the administration of the Office from The Illuminating Company to Ohio Edison;

2. to amend Article 6 of the Agreement so that CAPCO Unit Back-Up Power shall not be available for a CAPCO Unit when such CAPCO Unit is out of service due to the failure of a party having an ownership interest in such CAPCO Unit to supply in a timely manner its required share of nuclear fuel for such CAPCO Unit, and to amend Section 8.01 and to add "Schedule I—Replacement Power" to provide that Replacement Capacity and Replacement Energy shall be available when such CAPCO Unit is out of service for the reasons set forth in Schedule I;

3. to amend Article 13 of the Agreement to provide a different billing procedure, a revised interest charge on any unpaid amounts, and a different payment schedule for monies due and owning as the result of a nonparty's

system's failure to make payment for transactions under the Agreement; and

4. to amend the compensation sections of Schedules A—CAPCO Back-Up Power, B—Short Term Power, and C—Non-Displacement Power of the Agreement to provide for flexibility in charging for the adders to the out-of-pocket costs associated with such power.

No new facilities will be installed nor will existing facilities be modified in order to provide the service covered by the proposed Amendment. It is requested that Amendment No. 3 become effective July 1, 1984.

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, 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 protests should be filed on or before August 26, 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. 85-19734 Filed 8-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-52-000, 001]

Western Gas Interstate Co.; Proposed PGA Rate Adjustment

August 12, 1985.

Take notice that on August 5, 1985, Western Gas Interstate Company ("Western") submitted for filing Third Revised Sheet No. 10, Third Revised Sheet No. 11, and First Revised Sheet No. 212 to its FERC Gas Tariff, First Revised Volume No. 1. Said tariff sheets are proposed to become effective on August 1, 1985.

Western states that the proposed change in rates reflected on Third Revised Sheet No. 10 is being filed in accordance with its Tariff's PGA clauses which permits the recovery of changes in the cost of gas and of unrecovered purchased gas costs. Western further states that Third Revised Sheet No. 10 provides for: (1) A decrease in Western's total rate per Mcf under its Rate Schedule G-N from $3.4570 to $3.3760; (2) a decrease in Western's total rate under its Rate Schedule G-S from $3.9012 to $3.8431; and (3) no change in Western's total rate under its Rate Schedule G-R. These changes are based on Western's cost of purchased gas for the 12 months ending April 30, 1985. The decreases in the total rates under Western's Rate Schedules G-N and G-S result from a combination of factors including lower gas costs. Western also seeks authority to defer billing the affected customer under Rate Schedule G-R the Account 191 balance of $405,645.59 until abandonment of service is authorized, and to collect the unrecovered balance at that time by means of a lump-sum payment under that rate schedule.

Western also states that First Revised Sheet No. 212 is being filed in order to state specifically that Western's surcharge, as filed for August 1 effectiveness each year, will be the same surcharge that Western put into effect the previous February 1 of each year.

Western states that copies of this filing were served upon Western's transmission system customers and the interested state regulatory commissions. The filing is on file with the Commission and open to public inspection.

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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 20, 1985. Protests will be considered by the Commission 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 must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inpsection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19735 Filed 8-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER-85-658-000]

Wisconsin River Power Co.; Tariff Change

August 12, 1985.

Take notice that Wisconsin River Power Company (the "Company") on July 31, 1985 tendered for filing proposed changes in its FERC Electric Service Tariff.

The proposed changes have a proposed effective date of October 1, 1985; however, if the proposed rate schedule were in effect for the entire calendar year of 1985, the Company's revenues for the 12-month period ending December 31, 1985 nominally would increase by $1,265,846.

The proposed changes to the Company's rate schedule conform the Company's rate design to a conventional structure for electric utilities and provides for a rate of return consistent with levels customarily approved by the Commission. The rate of return provided in the proposed change in rate schedule will be in lieu of the rate of return currently earned by each of the Company's shareholders (all of which are electric utilities) in the form of a return on their investment in the Company pursuant to retail rate proceedings before the Public Service Commission of Wisconsin. All of the electric energy produced by the Company is sold to the Company's three shareholders. The proposed change in rate schedule, therefore, is not expected to impact materially the net cost of electric energy to the Company's customers.

Copies of the filing were served upon the public utility's jurisdictional customers and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.212 and 385.207 of the Commission's regulations. All such petitions or protests should be filed on or before August 26, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties of the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19736 Filed 8-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-3315, et al.]

Diamond Shamrock Exploration Co., and Diamond Shamrock Refining and marketing Co., et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

August 13, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 26, 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 to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-3315, *et al.* C & D, July 31, 1985.	Diamond Shamrock Exploration Co., and Diamond Shamrock Refining and Marketing Company, P.O. Box 631, Amarillo, Texas 79173.	Northern Natural Gas Company, a division of Inter-North, Inc. and Panhandle Eastern Pipe Line Company, Certain acreage in Hutchinson County, Texas.	(1)	14.73
G-6631-000 and G-16740-000, D, July 11, 1985.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Tennessee Gas Pipeline Company, N. Government Wells Fields, Duval County, Texas.	(2)	
G-11072-002, D, July 15, 1985	do	Panhandle Eastern Pipe Line Company, Hansford (Prairie) Field, Hansford County, Texas.	(3)	
G-13634-002, D, July 15, 1985	do	Northern Natural Gas Company, Hugoton-Anadarko Area, Beaver County, Oklahoma and Ochiltree County, Texas.	(3)	
G-18303-000, D, Aug. 6, 1985	do	El Paso Natural Gas Company, Eumont Field, Lea County, New Mexico.	(4)	
C160-691-000, D, July 12, 1985	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Panhandle Eastern Pipe Line Company, Northwest Avard & Various Fields, Alfalfa, Dewey, Major and Woods Counties, Oklahoma.	(5)	
C163-195, D, Aug. 5, 1985	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	El Paso Natural Gas Company, Basin Dakota Field, San Juan County, New Mexico.	(6)	
C165-1369-001, July 15, 1985	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252-2180.	Natural Gas Pipeline Company of America, Santa Fe Field, Brooks County, Texas.	(7)	14.73
C168-816-006 C, July 19, 1985	Phillips Petroleum Company, 336 HS&L Bldg., Bartlesville, Okla. 74004.	Northern Natural Gas Company, Panhandle Area, Gary County, Texas.	(8)	14.73
C168-1152-000, E, July 22, 1985	Amoco Production Company (Succ. in Interest to Texaco Inc.), P.O. Box 50879, New Orleans, La. 70150.	Southern Natural Gas Company, West Delta Block 73 Field, Offshore Louisiana.	(9)	14.73
C173-639-005, July 18, 1985	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Southern Natural Gas Company, South Pass Area Block 61, Offshore Louisiana.	(10)	14.73
C176-586-006, July 18, 1985	do	do	(7)	14.73
C180-365-002, D, July 29, 1985	Conoco Inc.	ANR Pipeline Company, South Marsh Island Blocks 136 and 137, Offshore Louisiana.	(11)	
C182-237-002, D, July 29, 1985	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	do	(11)	
C185-219-000 (C177-428) (C177-677) (C176-578) (C176-579), B, July 22, 1985.	Southern Union Exploration Company, 1217 Main Street, Suite 400, Dallas, Texas 75202.	Southern Union Company, El Paso Natural Gas Company and Western Gas Interstate Company, North Vacuum Field, Lea County, New Mexico, WAW Fruitland, San Juan County, New Mexico, Lea and San Juan Counties, New Mexico.	(12)	
C185-565-000, F, July 15, 1985	Kerr-McGee Corporation (Succ. in Interest to Southwestern Oil and Refining Company), P.O. Box 25861, Oklahoma City, Okla. 73125.	Tennessee Gas Pipeline Company, a division of Tenneco, Inc., Lajara Field, Hidalgo County, Texas.	(13)	14.73
C185-566-000, F, July 16, 1985	Southern Union Exploration Company (Partial succ. to Supron Energy Corporation).	El Paso Natural Gas Company, McManus No. 12 Well, San Juan County, New Mexico and San Juan 29-6 Unit No. 106 Well, Rio Arriba County, New Mexico.	(14)	14.73
C185-567-000, A, July 18, 1985	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Southern Natural Gas Company, South Pass Block 67, Offshore Louisiana.	(15)	14.73
C185-568-000, A, July 22, 1985	do	Tennessee Gas Pipeline Company, West Cameron 66 Field, "E" Platform, Offshore Louisiana.	(16)	14.73
C185-569-000, F, July 23, 1985	Samson Resources Company (Succ. in Interest to Loben Oil Corporation), Samson Plaza, Two West Second Street, Tulsa, Okla. 74103.	Arkansas Louisiana Gas Company, Latimer, LeFlore, Pittsburg, and Coal Counties, Oklahoma; Bossier and Claiborne Parish, Louisiana; Sebastian County, Arkansas.	(17)	14.73
C185-590-000 (C169-286), B, July 18, 1985.	Sun Exploration and Production Co., P.O. Box 2880, Dallas Texas 75221-2880.	Natural Gas Pipeline Company of America, Riggs Unit, Well No. 1 So. Taloga Field, Dewey County, Oklahoma.	(18)	
C185-591-000 B, July 18, 1985	Sklar & Phillips Oil Co., P.O. Box 3735, Shreveport, La. 71133-3735.	Transcontinental Gas Pipe Line Corporation, Guoydan field, Vermilion Parish, Louisiana.	(19)	
C185-592-000 B, July 23, 1985	J. Burns Brown Operating Co., P.O. Box 130966, Tyler, Texas 75713.	Northern Natural Gas Company, Lohman Field, Blaine County, Montana.	(20)	
C165-593-000 (C170-495), B, July 23, 1985.	John H. Hill, 100 Southland Center, Dallas, Texas 75201.	Western Gas Interstate Company, Northwest Six Mile Field, Beaver County, Oklahoma.	(21)	
C185-594-000, A	Southern Union Exploration Company	El Paso Natural Gas Company, Pictured Cliffs (Chaco), San Juan, New Mexico.	(22)	14.73
C185-595-000, A, July 22, 1985	Southern Union Exploration Company, 1217 Main Street, Suite 400, Dallas, Texas 75202	do	(23)	14.73

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
C185-596-000, A, July 26, 1985	TXP Operating Company, c/o Transco Exploration Company, P.O. Box 1396, Houston, Texas 77251.	Transcontinental Gas Pipe Line Corporation, Mustang Island Area Block A-111, Offshore Texas.	(1 9)	14.73
C185-598-000, A, July 29, 1985	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Longhorn Pipeline Company, South Marsh Island Blocks 136 and 137, Offshore Louisiana.	(2 4)	14.73
C185-600-000, A, July 31, 1985	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252-2180.	Humble Gas Transmission Company, High Island Block 130, Offshore Texas.	(2 5)	14.73
C185-601-000 (G-3512), B, July 31, 1985.	Phillips Petroleum Company, 336 HS&L Bldg., Bartlesville, Okla. 74004.	Tennessee Gas Pipeline Company, Lizzie Field, Wharton County, Texas.	(2 6)	
C185-602-000, F, Aug. 1, 1985	TXO Production Corp. (Partial succ. in interest to Chevron U.S.A. Inc), First City Center, LB 10, 1700 Pacific Avenue, Dallas, Texas 75201-4696.	Texas Eastern Transmission Corporation, Hico-Knowles, Terryville, North Choudrant, Tremont, and North Carlton Fields, in Lincoln, Quachita, and Union Parishes, Louisiana.	(2 7)	14.73
C185-603-000 (C175-745), B, Aug. 5, 1985.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	United Gas Pipe Line Company, East Dykesville Fields, Claiborne Parish, Louisiana.	(2 8)	

[1] Applicants jointly request that the Commission partially consolidate several rate schedules to reflect the assignment of a lease by Exploration to W.L. Toney and the purchase of gas from that lease by Refining and Marketing for resale in interstate commerce.
[2] Partial Assignment and Bill of Sale executed on 5-1-85, effective 5-1-85 to Petroleum Equities Corporation.
[3] Partial Assignment and Bill of Sale executed on 5-15-85, effective 5-1-85 to Vernon E. Faulconer.
[4] Partial assignments of properties to Doyle Hartman.
[5] A portion of the acreage subject to R.S. 202 has been assigned.
[6] Surrender of the lease.
[7] Applicant is filing for an additional delivery point.
[8] Applicant is filing under Exchange Agreement dated 6-17-68, amended by amendment dated 6-1-85.
[9] Applicant is filing under Gas Purchase Contract dated 2-23-68, amended by ratified contract by agreement dated 5-31-74, amended by letter agreement dated 8-11-72 and letter agreement dated 8-15-83.
[10] Applicant is filing for the utilization of gas from the South Pass Block 61 Field in either the EOR Project at South Pass Block 61 Field, approved by the Commission 2-20-81, or the EOR Project at Chandleur Sound Block 25 Field, approved by the Commission 12-21-84.
[11] Conoco and ANR have agreed to a partial abandonment for a limited period of time over a (3) year period.
[12] Partial and termination of sales.
[13] Applicant is filing under a 6-14-85 rollover contract.
[14] Effective date of transfer of ownership: 12-31-80. Proposed effective date of assignment: 12-31-80.
[15] Applicant is filing under Gas Purchase Contract dated 4-15-85.
[16] Applicant is filing under Gas Purchase Contract dated 7-16-85.
[17] Effective date of transfer of ownership: 12-31-82. Proposed effective date of assignment: 12-31-82.
[18] Rigg Unit, Well No. 1 ceased producing in February of 1983 and that all leases within the proration unit expired.
[19] Gas production has ceased and no further development is planned. Pipe Line purchaser wishes to remove its facilities previously used to receive gas from the now depleted well.
[20] Well not commercial.
[21] The original purchaser has not taken any gas since 1978. Further, original purchaser does not intend to take any gas from Morrow Formation. In order to do so, the original purchaser would have to install compression equipment which the purchaser has determined is not cost effective.
[22] Applicant is filing under Gas Purchase Agreement dated 4-1-85.
[23] Not used.
[24] Applicant to sell gas to Longhorn under Gas Purchase contract dated 7-15-85 and is requesting a Limited-Term certificate of public convenience and necessity with Pre-Granted abandonment.
[25] Applicant is filing under Contract dated 5-1-85.
[26] The 8-1-74 Gas Purchase Contract expired by its own terms on 1-1-79. The Poole Unit No. 1 located in the A.J. Fry Survey A-434, Wharton County, Texas which was the only well covered under this sale was plugged and abandoned on 12-15-79. The oil and gas lease covering this property was released by Phillips on 12-19-79.
[27] By an Assignment effective 10-12-83 Applicant acquired from Chevron U.S.A., Inc. Certain property. Applicant requests that its succession authorization be effective simultaneously with the effective date of the Assignment, 10-12-83.
[28] Last active well under contract was plugged and abandoned on 5-26-83. Sun and purchaser have mutually agreed to terminate contract.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 85-19737 Filed 8-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-40-000]

Petition To Reopen and Vacate Final Well Category Determination Anadarko Production Co.

August 13, 1985.

On July 31, 1985, Anadarko Production Company filed with the Federal Energy Regulatory Commission pursuant to section 275.205 of the Commission's Regulations a petition to reopen and vacate final well category determination made as to the Moore "C" No. 1 Well, Interstate Red Cave Field, Morton County, Kansas.

On May 29, 1980, Anadarko filed a well determination application before the Kansas Corporation Commission (Kansas) seeking determination that the well qualified as an NGPA 108 stripper well. The Kansas Corporation Commission determined on August 28, 1980, that the well qualified for stripper well status. The well determination became final forty-five days after the Commission had received notice.

Anadarko states that subsequent to the well category determination it discovered that while the well did not produce natural gas in excess of 60 Mcf per production day based on a 90-day production period, the well determination was in error. Unbeknownst to its administrative personnel, Anadarko's field staff had restricted production from the well and maintained a back pressure of 200-230 p.s.i., in order to inhibit the accumulation of liquids in the wellbore. Had the existence of the production restriction had been known no stripper well determination would have been made.

Anadarko requests that the Commission grant its petition to reopen the well determination proceeding as to the Moore "C" No. 1 Well and vacate the well's designation as a NGPA section 108 stripper well.

Any person desiring to be heard or to make any protest to Anadarko's petition, should file, within 30 days after this notice is published in the **Federal Register**, a motion to intervene or a protest under Rules 214 or 211 of the Commission's Rules of Practice and Procedure. Filings should be made with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C., 20426. All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19738 Filed 8-16-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2883-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have

been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, 202-382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

• Title: TSCA section 8(c) Rule Evaluation Pilot Study (EPA #1269). (This is a one-time request.)

Abstract: This pilot study is designed to test an evaluation plan and industry mail survey methodology design under a previous EPA contract. The evaluation assesses the impact of the TSCA section 8(c) rule on chemical manufacturers/processors, while the pilot study is designed to refine the evaluation data collection instrument and fielding procedures for future use.

Respondents: Two hundred establishments falling under the Standard Industrial Classification (SIC) System.

Agency PRA Clearance Requests Completed by OMB

EPA #0283, Wastewater Permit Quarterly Noncompliance Report, was approved 7/19/85 (OMB #2040-0082; expires 7/31/88).

EPA #1000, Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions, was approved 7/30/85 (OMB # 2070-0003; expires 7/31/88).

EPA #1012, Application for PCB Disposal Units, was approved 7/31/85 (OMB # 2070-0011; expires 7/31/88).

EPA #1050, New Source Performance Standards for Storage Vessels for Petroleum Liquids, was approved 7/25/85 (OMB # 2060-0121; expires 7/31/88).

EPA #1052, New Source Performance Standards for Fossil Fuel Fired Steam Generators, was approved 7/25/85 (OMB # 2060-0026; expires 7/31/88).

EPA #1058, New Source Performance Standards for Municipal Incinerators—Reporting and Recordkeeping Requirements, was approved 7/25/85 (OMB # 2060-0040; expires 7/31/85).

EPA #1061, New Source Performance Standards for Phosphate Fertilizer Plants, was approved 7/25/85 (OMB # 2060-0037; expires 7/31/88).

EPA #1062, New Source Performance Standards for Monitoring for Coal Preparation Plants, was approved 7/25/85 (OMB # 2060-0122; expires 7/31/88).

EPA #1084, New Source Performance Standards for Non-metallic Mineral Processing Plants (SAR No. 1880), was approved 7/30/85 (OMB # 2060-0050; expires 7/31/88).

EPA #1230, Information Requirements for New Source Review and Prevention of Significant Deterioration Permitting Programs, was approved 7/27/85 (OMB # 2060-0003; expires 7/31/88).

EPA #1248, Census of State and Territorial Non-Hazardous Waste Programs, was approved 7/26/85 (OMB # 2050-0052; expires 7/31/86). Comments on all parts of this notice may be sent to:

Nanette Liepman (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation and Information Management Division, 401 M Street, SW., Washington, DC 20460

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503

Dated: August 13, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85-19709 Filed 8-16-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59199B; FRL-2883-2]

Certain Chemical; Premanufacture Exemption Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). TME 85-56. The test marketing conditions are described below.

EFFECTIVE DATE: August 7, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611D, 401 M Street, SW., Washington, DC 20460, (202-382-3395).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test market exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-85-56. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. The production volume, use and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-85-56. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T 85-56

Date of Receipt: June 27, 1985.

Notice of Receipt: July 8, 1985 (50 FR 27847)

Applicant: Confidential.

Chemical: (S) Humic acids, chromium (3^+) salts.

Use: (G) Open, nondispersive use.

Production Volume: Confidential.

Number of Customers: One.

Worker Exposure: Confidential.

Toxicity Data: No data on the TME substance submitted.

Test Marketing Period: Six months.
Commencing on: August 7, 1985.
Risk Assessment: EPA identified no significant health or environmental concerns, based on expected poor absorption via all routes, and because the chromium is not expected to be bioavailable in this form. Therefore, the TME substance will not present any unreasonable risk of injury to health or the environment.
Public Comments: None.
The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 7, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-19713 Filed 8-16-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 13, 1985.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register**.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to approve under OMB delegated authority the extension with revision of the following reports:

1. Report title: Report of Commercial Paper Outstanding Placed by Brokers and Dealers, Report of Commercial Paper Outstanding Placed directly by Issuers, and Daily Report of Offering Rates on Commercial Paper
Agency form number: FR 2957 a, b, and d
OMB docket number: 7100-0002
Frequency: Daily, Weekly, Monthly (3 reports)
Reporters: Securities Brokers and Dealers and Direct Issuers of Commercial Paper
Small businesses are not affected.
General Description of report: This information collection is voluntary [12 U.S.C. § 353 et. seq.] and is given confidential treatment [5 U.S.C. § 552b(4)].
These reports provide information on the amount outstanding and selected offering rates on commercial paper, which is used by the Federal Reserve in monitoring developments in the commercial paper market for supervisory, regulatory, and monetary policy purposes.

Board of Governors of the Federal Reserve System, August 13, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19693 Filed 8-16-85; 8:45 am]

BILLING CODE 6210-01-M

Barclays U.S. Holdings Inc., Barclays PLC, Barclays Bank PLC, Barclays USA Inc. and Barclaysamerican-corporation, et al; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under §§ 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR 225.23(a) (2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 9, 1985.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays U.S. Holding Inc.*, New York, New York; *Barclays PLC* and *Barclays Bank PLC*, both of London, England; *Barclays USA Inc.*, Wilmington, Delaware; and *Barclaysamericancorporation*, Charlotte, North Carolina; to acquire Northwestern Mortgage Corporation, Charlotte, North Carolina and certain construction and development loans from Northwestern Bank, thereby engaging in mortgage banking and the sale of credit life and credit, accident and health insurance, pursuant to section 4(c)(8) of the Act.

2. *Creditanstalt-Bankverein*, Vienna, Austria; to acquire 80 percent of the outstanding capital stock of McKenzie-Walker Investment Management, Inc. Larkspur, California, a registered investment advisor (with an option to purchase the remaining 20 percent), thereby engaging in providing portfolio investment advise.

Board of Governors of the Federal Reserve System, August 13, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19691 Filed 8-16-85; 8:45 am]

BILLING CODE 6210-01-M

City Holding Co., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 9, 1985.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *City Holding Company*, Charleston, West Virginia; to acquire 100 percent of the voting shares of The Bank of Cross Lanes, Cross Lanes, West Virginia.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Brownsville Bancshares Corporation*, Brownsville, Tennessee; to merge with Farmers Union Bancshares Inc., Ripley, Tennessee, thereby indirectly acquiring Farmers Union Bank, Ripley, Tennessee.

Applicant has also applied to acquire at least 80 percent of the voting shares of Union Savings Bank, Covington, Tennessee.

2. *Citizens Fidelity Corporation*, Louisville, Kentucky; to acquire 100 percent of the voting shares of The Winchester Bank, Winchester, Kentucky.

3. *Commerceamerica Corp.*, Jeffersonville, Indiana; to acquire 100 percent of the voting shares of Old Capital Financial Corporation, Corydon, Indiana, thereby indirectly acquiring Old Capital Bank & Trust Company, Corydon, Indiana.

4. *Junction City Holding Company*, Junction City, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Junction City Bancshares, Inc., Junction City, Arkansas, thereby indirectly acquiring Union State Bank, Junction City, Arkansas.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Wheatland Bankshares, Inc.*, Wheatland, Wyoming; to become a bank holding company by acquiring 100 percent of the voting shares of American Bank of Wheatland, Wheatland, Wyoming.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Stockmen's Bancorp*, Kingman, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of The Stockmen's Bank, Kingman, Arizona.

Board of Governors of the Federal Reserve System, August 13, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19692 Filed 8-16-85; 8:45 am]

BILLING CODE 6210-01-M

Community Holding Company, 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 insection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 12, 1985.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Community Holding Company*, Inez, Kentucky; to acquire 54.298 percent of the voting shares of The First National Bank of Louisa, Louisa, Kentucky.

2. *Society Corporation*, Cleveland, Ohio; to acquire 100 percent of the voting shares of Society Bank of Northwest Ohio, Port Clinton, Ohio.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merchants National Corporation*, Indianapolis, Indiana; to merge with Farmers National Corporation, Shelbyville, Indiana, thereby indirectly acquiring The Farmers National Bank of Shelbyville, Shelbyville, Indiana.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice

President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Nicholas, Inc.*, Dillion, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank and Trust Company, Dillon, Montana.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ottawa Bancshares, Inc.*, Ottawa, Kansas; to acquire 84.7 percent of the voting shares of First State Bank, Hoisington, Kansas.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texstar Financial Corporation, Inc.*, Azle, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Azle, Azle, Texas.

Board of Governors of the Federal Reserve System, August 14, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19780 Filed 8-16-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85N-0131]

Globe Blood Plasma Center, Inc.; Opportunity for Hearing on Denial of Licensure

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is giving notice of an opportunity for a hearing on its denial of the issuance of an establishment license and product license to Globe Blood Plasma Center, Inc., for the manufacturer of Source Plasma. The denial of licensure was based on significant noncompliance with certain provisions of the biologics regulations specified in this document.

DATES: The firm may submit a written request for a hearing by September 18, 1985, and any data justifying a hearing must be submitted by October 19, 1985. Other interested persons may submit comments on the denial of licensure by October 18, 1985.

ADDRESS: Written requests for hearing, data, and written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael L. Hooton., Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301-443-3460.

SUPPLEMENTARY INFORMATION: FDA has denied issuance of an establishment license and product license to Globe Blood Plalsma Center, Inc., 2239 West Fond du Lac Ave., Milwaukee, WI 53206, for the manfacutre of Source Plasma. FDA based its denial of licenses on (1) FDA insepction of the firm that revealed significant deviations from the applicable biologics regulations (21 CFR Parts 600 through 640), (2) failure of the firm to adequately respond to questions relating to the license applications and to correct deficiencies, as the firm had committed itself to do, and (3) failure of the responsible head (§ 606.20) ot exercise control of the establishment in all matters relating to compliance with the provisions of the establishment and product license applications, the standard operating procedures manual, and the applicable regulations.

Licensing History

In 1983, Globe Blood Plasma Center, Inc., submitted to FDA under section 351 of the Public Health Service Act applications requesting licensure to produce source plasma. FDA refused to issue the licenses because of serious deficiencies in the applications and subsequent correspondence. In applications of May 22, 1984, the firm again requested licensure.

The applications were not acceptable to FDA; however, on August 9 and 24, 1984, the agency performed a limited prelicensure inspection of the establishment. Following further correspondence with the firm (FDA's letter of September 27, 1984), FDA permitted the establishment to begin limited prelicensure operations. On October 30 and 31, and November 1, 1984, FDA performed another limited prelicensure inspection that revealed significant deviations from the biologics regulations concerning labeling, quality control procedures, and improper temperatures in product storage freezers. After reviewing the firm's written response to the deviations found during that inspection, on December 17, 18, and 19, 1984, FDA performed an in-depth prelicensure inspection.

Findings of the Prelicensure Inspection of December 1984

The inspection revealed numerous deviations from the regulations regarding recordkeeping and standard operating procedures. Many of these deviations were the same as the deviations which FDA had noted in written correspondence with the firm and during the previous limited inspections above. FDA believes that these deviations demonstrate that Globe Blood Plasma Center, Inc., has failed to provide assurance that the health and safety of donors will be protected. The correspondence and inspections reveal that managerial personnel have not demonstrated a level of education and training that is necessary to safely operate a plasmapheresis center. The deviations found during the December 1984 prelicensure inspection included, but were not limited to, the following:

1. No serum protein electrophoresis (SPE) tests were performed on new donors' blood samples prior to December 14, 1984. Some donors had donated as often as five times prior to collection of a sample for SPE testing (21 CFR 640.65(b)(1) and 640.72(a)(2)).

2. Deviations related to hepatitis B surface antigen testing included:

(a) The date of collection of the plasma noted on the records for the test for hepatitis B surface antigen did not always match with the actual date of donation (21 CFR 600.12(a) and 606.160 (a) and (b)); and

(b) The firm's responsible personnel were unable to show that the test for the presence of hepatitis B surface antigen used by the testing laboratory was an FDA approved test (21 CFR 600.10 (a) and (b), 610.40, 610.41, and 640.67).

3. Inadequate or unsatisfactory facilities, misidentified reagents, and faulty equipment were demonstrated by the following:

(a) There was insufficient light to obtain a clear and accurate reading with the refractometer to assure that only those donors having an acceptable blood protein value were accepted for plasmapheresis (21 CFR 606.40(b) and 606.60(a));

(b) The lot of sodium chloride being used for laboratory testing during December 17 through 19, 1984, was incorrectly identified in the firm's supply records (21 CFR 606.160(a)(2) and (b)(7)(v)); and

(c) The refrigerators being used to store reagents contained an obviously faulty thermometer and temperatures were being recorded that were outside of the acceptable temperature storage range for the reagents with no indication that the discrepancy was recognized by management or that appropriate followup action was initiated (21 CFR 606.60(a), 606.65, and 606.160(b)(3)(iii)).

4. The calculation used to determine the final volume of plasma collected

was incorrect. During the calculation the weight of the plasma container was not subtracted. Accurate weight of the plasma collected is essential for an accurate plasma volume determination (21 CFR 606.100(b)(5) and 606.160(a)(1)).

5. Important changes in manufacturing methods, including a change in the testing laboratory responsible for performing the serum protein electrophoresis test and the test for the presence of hepatitis B surface antigen, were made without reporting the changes to FDA's Office of Biologics Research and Review (21 CFR 601.12).

6. No procedure was available to determine the maximum allowable weight of blood that may be collected at one time from light donors (weighing less than 175 pounds) and heavy donors (weighing 175 pounds or greater) to assure that no more than 500 milliliters of whole blood was collected from light donors and no more than 600 milliliters of whole blood was collected from heavy donors (21 CFR 640.65(b)(6)).

7. The written standard operating procedures (SOP) of the firm are inconsistent with actual practice or inadequate in certain manufacturing area because:

(a) The plasmapheresis apparatus described in the SOP is not the same as the equipment being used;

(b) No cardiopulmonary resuscitation (CPR) team is available, as specified in the SOP; and

(c) The SOP contains no screening procedure for personnel to review donor record files at appropriate time intervals, which would result in the failure of the personnel to appropriately collect serum samples for the required serum protein electrophoresis test (21 CFR 606.100).

8. In addition, the donor records of the firm were not adequate because:

(a) The records do not always identify the reason why donors were rejected (21 CFR 606.160(b)(1)(ii)); and

(b) The records do not always demonstrate that corrective actions were taken following an overbleed that would identify its cause and preclude a re-occurrence (21 CFR 606.160(b)(1)(vi)).

The deviations listed above are representative, but are by no means all inclusive, of the information reviewed and evaluated by FDA in formulating its decision to deny licensure to Globe Blood Plasma Center, Inc. Any information available to FDA regarding the firm may be applicable to any hearing that may result from publication of this notice of opportunity for hearing.

FDA's letter of January 28, 1985, issued under § 601.4(b) informed Globe Blood Plasma Center, Inc., that the firm does not meet the standards for licensure established by the regulations and that FDA was, therefore, denying the firm's applications. The letter detailed the grounds for the denial and instructed the establishment, among other things, to cease collection of Source Plasma related to its previously submitted license application. The letter also offered the firm the opportunity to request an opportunity for hearing on this matter. The firm, in a letter of January 30, 1985, to FDA, requested the opportunity for a hearing. Under 21 CFR 12.21(b) and 601.4(b), FDA issuing a notice of opportunity for hearing on the matter.

Copies of the List of Observations (Form 483) issued during the inspection of December 17, 18, and 19, 1984, FDA's letter of January 28, 1985, offering the firm the opportunity to request a hearing on the matter, and the firm's letter of January 30, 1985, requesting the opportunity for hearing are on file at the Dockets Management Branch (address above).

The Commissioner of Food and Drugs is offering an opportunity for a hearing under §§ 12.21 (a) and (b) and 601.4(b) on the denial of an establishment license and product license to Globe Blood Plasma Center, Inc., for the manufacture of Source Plasma. The establishment may submit a written request for a hearing to the Dockets Management Branch by September 18, 1985, and any data justifying a hearing must be submitted by October 18, 1985.

Other interested persons may submit comments on the denial of licensure to the Dockets Management Branch by October 18, 1985. The failure of a pending licensee to file a timely written request for a hearing constitutes an election of the pending licensee not to avial itself of the opportunity of a hearing concerning the denial of the license submission (21 CFR 12.21(b)).

FDA procedures and requirements governing a notice of opportunity for hearing, notice of appearance and request for hearing, grant or denial of hearing, and submission of data and information to justify a hearing are contained in 21 CFR Parts 12 and 601 and 21 CFR 314.200. A request for a hearing may not rest upon mere allegations or denials, but must set forth a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact that precludes the denial of the license, or when a request for hearing is not made in the required format, or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the applicant requesting the hearing, making findings and conclusions that justify denying a hearing.

Two copies of any submissions are to be provided to FDA, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended, 1055–1056 as amended (21 CFR 321, 351, 352, and 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and the redelegation at 21 CFR 5.67 (see the **Federal Register** of July 29, 1985; 50 FR 30696).

Dated: August 9, 1985.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 85-19674 Filed 8-16-85; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; Alcohol, Drug Abuse, and Mental Health Administration

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 36163–7, August 19, 1975, as amended by 48 FR 5599, February 7, 1983) is amended to reflect the reorganization of the offices and divisions of the National Institute of Mental Health, ADAMHA, with the exception of the Division of Intramural Research Programs and Saint Elizabeths Hospital. This reorganization was effected to align the structure of the Institute to emphasize the Institute's mission of research, dissemination of research findings, and technical assistance in the promotion and the improvement of mental health services. The reorganization accomplishes the following: (1) Abolishes the Division of Extramural Research Programs, the Division of Human Resources, the

Division of Prevention and Special Mental Health Programs, the Office of Extramural Project Review, and the Office of State and Community Liaison; (2) retitles the Division of Biometry and Epidemiology to be the Division of Biometry and Applied Sciences; the Division of Communications and Education to be the Office of Scientific Information; the Office of Policy Development, Planning, and Evaluation to be the Office of Policy Analysis and Coordination; and the Office of Program Support to the Office of Resource Management; (3) establishes the Division of Basic Sciences, the Division of Education and Service Systems Liaison, the Division of Clinical Research, and the Division of Extramural Activities; and (4) modifies all functional statements for the above mentioned offices and divisions.

Section HM–B, Organization and Functions, is amended as follows:

Under *ADAMHA (HM),* delete all functional statements under the title of the *National Institute of Mental Health (HMM),* with the exception of the *Office of the Director (HMM1), Saint Elizabeths Hospital—Division of Clinical and Community Services (HMM8),* and the *Division of Intramural Research Programs (HMMB),* and substitute the following:

Office of Policy Analysis and Coordination (HMM13). (1) Directs, conducts, and supports long-range planning and policy development for Institute programs and activities and for other issues of national importance in the field of mental health; (2) recommends principles to be considered in formulation of operational planning, budget development and execution, and resource allocation; (3) coordinates and serves as policy liaison for the Institute within the Department, with the legislative and executive branches, and with special interest groups; (4) serves as focal point for legislative and regulatory matters; (5) conducts program analysis and evaluation activities; and (6) oversees an executive secretariat charged with operating a system to manage and assure quality of Institute and higher level correspondence.

Office of Resource Managment (HMM15). (1) Provides and coordinates a management strategy for the Institute; (2) advises the Director, NIMH, on managment policy and procedure interpretation and implementation; (3) oversees the development of Institute budget proposals and controls and monitors funds, facilities, and staff allocations; (4) coordinates grants and acquisition activities; (5) oversees and coordinates the provision of general administrative services throughout the Institute; (6) oversees the integration of management information systems and data bases; (7) develops short-range operational plans and monitors implementation of program activities for conformance to Instititute goals; and (8) manages personnel and program resources to ensure maximum performance.

Office of Scientific Information (HMM17). (1) Administers the Institute's public communication, scientific information dissemination, and media relations activities for both professionals and the public; and (2) provides for technical information services.

Division of Basic Sciences (HMM2). (1) Directs, plans' and supports programs of research research, training, and resource development in the neurosciences and the behavioral and psychobiological sciences; (2) reviews and assesses the performance of such programs; and (3) collaborates with other Federal agencies and with outside organizations.

Division of Clinical Research (HMM6). (1) Directs, plans, conducts, and supports programs of research, research training, and resource development in epidemiology, psychopathology, classification, assessment, etiology, genetics, clinical course, outcome, treatment, and prevention of mental disorders with special emphasis on schizophrenic disorders, affective and anxiety disorders, and mental disorders of children and adolescents and of the elderly; (2) reviews and assesses the performance of such programs; and (3) collaborates with other Federal agencies and with outside organizations.

Division of Biometry and Applied Sciences (HMM9). (1) Directs, plans, supports, and conducts programs of research, research training, and resource development on (a) service delivery and health economics at the clinical, institutional, and systems levels; (b) the understanding, treatment, and prevention of antisocial and violent behavior and the effects thereof, including law and mental health interaction; (c) the prevention, control and treatment of rape, other sexual assault, and the effects thereof; (2) directs, plans, supports, and conducts programs of minority research training and research resource development; (3) oversees a national reporting program to obtain, analyze, and disseminate statistics on the major characteristics of the Nation' mental health service systems; (4) oversees methodology development for research and data collection in biometry, services research, health economics, and demography; (5) provides statistical and mathematical consultative services to the Institute; (6) provides consultation to State and local mental health agencies on statistical methodology, mental health information systems, and the use of statistical and demographic data; (7) reviews and assesses the performance of the Division's programs; and (8) collaborates with other Federal agencies and with outside organizations.

Division of Education and Service Systems Liaison (HMMC). (1) Directs, plans, and supports programs to improve the quality of mental health treatment, rehabilitation, and prevention; (2) coordinates technical assistance and consultation to national organizations, State and local governments, service agencies, family and consumer groups, and educational institutions; (3) supports service system and human resource demonstration projects, State planning and human resource development projects, and training in the mental health disciplines and related fields; (4) coordinates disaster assistance and other mental health emergency services; and (5) reviews and assesses the performance of Division programs.

Division of Extramural Activities (HMMD). (1) Provides leadership and advice in developing, implementing, and coordinating extramural programs and policies; (2) represents the Institute on extramural programs and policy issuess within the Department and with outside organizations; (3) provides scientific and technical peer and objective review of applications for grants, cooperative agreements, and contracts; (4) provides information and guidelines for grant applications; and (5) oversees National Advisory Mental Health Council activities and provides committee management services.

Section HM. Delegations of Authority. All delegations and redelegations of authority made to ADAMHA officials, which were in effect immediately prior to this reorganization, shall continue in effect in them or their successors pending further redelegations.

Dated: August 12, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85–19716 Filed 8–16–85; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6661-C]

Alaska Native Claims Selection; Eklutna, Inc.

On July 8, 1985, Decision to Issue Conveyance (DIC) was issued to Eklutna, Inc., for the surface estate of certain lands within the Lake George Recreation Area, notice of which was published in the **Federal Register** (40 FR 27363–27364) on July 2, 1985.

The purpose of the decision is to vacate in its entirety the DIC of July 8, 1988, to allow for additional easement review and identification. A new decision will be issued at a later date.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–19729 Filed 8–16–85; 8:45 am]

BILLING CODE 4310-JA-M

[Alaska AA-48188-B]

Alaska; Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48188–B has been received covering the following units:

Copper River Meridian, Alaska

T. 11 N., R. 3 W.,
Sec. 15, E½SW¼.

(80 acres).

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accuring from November 1, 1984, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48188–B as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Mangement is proposing to reinstate the lease effective November 1, 1984, subject to the terms and conditions cited above.

Dated: August 8, 1985.

Robert E. Sorensen,

Chief, Branch of Mineral Adjudication.

[FR Doc. 85–19561 Filed 8–16–85; 8:45 am]

BILLING CODE 4310-JA-M

Casper District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Casper District Advisory Council Meeting.

SUMMARY: The Casper District Advisory Council will meet on September 11, 1985, in the conference room of the Bureau of Land Management's Casper District Office in Casper, Wyoming. The meeting will begin at 10:00 a.m. MDT.

The meeting agenda will include an update on cadastral survey activities in the Casper District; a report on wild horse management; potential conflicts of development activities with threatened or endangered species; a briefing on procedural steps to permit new oil and gas wells; and, comments from the public. Other topics may be considered as suggested by council members or the public.

Meetings are open to public participation. Persons who desire to address the council are asked to contact Runore Wycoff at 307/261–5101 in advance of the meeting.

DATE: September 11, 1985 at 10:00 a.m. MDT.

ADDRESS: Bureau of Land Management, 951 N. Poplar Street, Casper WY, 82601.

FOR FURTHER INFORMATION CONTACT: Runore Wycoff, Casper District Office, Bureau of Land Management, 951 N. Poplar Street, Casper, WY 82601.

Dated: August 8, 1985.

Whitney A. Bradley,

Acting District Manager.

[FR Doc. 85–19563 Filed 8–16–85; 8:45 am]

BILLING CODE 4310-22-M

[OR-39055]

Oregon; Proposed Withdrawal and Reservation of Lands and Opportunity for Public Meeting

Correction

In the issue of Wednesday, July 24, 1985, in the document beginning on page 30240 in the third column, make the following corrections on page 30241:

1. In the first column, in the last paragraph, in the sixth line, after "approved" insert "prior".

2. The dated line should read "July 15, 1985".

3. In the FR docket line, "85–17597" should read "85–17595".

BILLING CODE 1505-01-M

Minerals Management Service

Request for Comments on Appendix P: Analysis of Tract Selection and Areawide Leasing Approaches (an Appendix to the Secretarial Issue Document for the Upcoming Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program)

DATES: Comments must be received by September 13, 1985.

ADDRESSES: Comments should be submitted to the Deputy Associate Director for Offshore Leasing, Minerals Management Service, Room 4229, Mail Stop 641, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Copies of the Appendix may be requested by writing to the above address or by contacting Tim Redding at (202) 343–1072. Questions on the substance of the Appendix may be directed to Don Sant at (202) 343–3526 or Ted Heintz at (202) 343–7258.

SUPPLEMENTARY INFORMATION: An initial version of the Secretarial Issue Document for the new 5-year program (including Appendix P) was issued on March 21, 1985. Based on comments received on that initial version and additional analysis, a revised version of Appendix P has been prepared and is now available for further public comment. Comments on the revised version of Appendix P have been requested from the Governors of all coastal States.

SUMMARY: The change in 1983 from tract selection to areawide OCS lease sales caused considerable controversy on several grounds. This appendix analyzes those aspects of the controversy concerning investment and revenues. It evaluates the extent to which experience with areawide leasing has achieved its objectives and borne out the concerns expressed about its effects. It also discusses the implications of the new 5-year leasing program.

The most important conclusions from this analysis are that areawide leasing may have caused:

- Substantial increases in the investments in leasing and exploration needed to reap the energy and economic benefits of OCS resources;
- A relatively small part of the total decline in bonuses observed in leasing during 1983 and 1984; and
- A substantial increase in the total return to the U.S. treasury from accelerated leasing of OCS oil and gas.

Central to the analysis is the concept of the OCS lands as an inventory of investment opportunities. An analytic

framework is developed which accounts for changes in the inventory of unleased tracts that can occur as a result of changing economic conditions (particularly oil price expectations), changing geologic knowledge, and the different leasing rates that can occur. The status of the inventory depends not only on the economic and geologic conditions that make prospects valuable, but on the way in which tracts have been sold from the inventory in previous years. Changes in the Government's inventory of unleased tracts are reflected in changes in the characteristics of the tracts sold in subsequent sales. Thus, as sales proceed, the amount of acreage leased, its value, the cash bonus revenue collected by the Government, and the subsequent level of investment in exploration would be expected to change as the nature of the unleased inventory changed.

Two key objectives of areawide leasing were to expand the amount and location of acreage leased and to increase the rate of investment in exploration. Critics expressed related concerns that industry did not have the capital to expand its investment and that leases would be acquired, but not explored or developed until years later. This appendix examines data on the experience under tract selection and areawide leasing. It shows that during the 1976–1982 period, leasing and investment in exploration did not expand as price increases made more tracts attractive for investment. As a result, the Government's inventory of unleased acreage worth investing in grew in size and value. Areawide leasing in 1983 and 1984 substantially increased industry's investment in lease acquisition and exploration, particularly in the Gulf of Mexico. There is also evidence that there will continue to be increased exploration investment in the future, based on the exploration plans that have been submitted in recent years.

The buildup of the inventory in the 1976–1982 period and its drawdown in 1983–1984 also had important revenue consequences. Critics of areawide leasing charged that competition would be so thinned by offering much more acreage that bonus bids would decline and the fair market value requirement of section 18(a)(4) would be violated. This appendix shows that the restricted leasing in tract selection sales of the 1976–1980 period increased average bonus bids per acre, primarily by withholding tracts from sale while their value appreciated. Total revenues from bonuses in that period were limited because of the limited amount of acreage leased.

In contrast, areawide leasing in 1983 and 1984 drew down the inventory rapidly. This accelerated leasing resulted in receiving revenues much earlier than would have been the case under tract selection procedures. Bonuses have been received in the 1983–1984 period that would otherwise have been spread out over the 1983–1991 period. Ultimately, royalties and taxes will also be received earlier. This paper estimates that, under the actual leasing rates in the Central and Western Gulf of Mexico in 1983 and 1984, bonuses would have to have been increased, perhaps by as much as $8.5 million higher per tract, under the leasing rates of tract selection procedures to yield the same present value of revenues as will be realized by the Federal Government from areawide lease sales in those areas.

The drawdown in the inventory also resulted in decreasing average bids although total revenues from bonuses increased, particularly in 1983. Fewer high value tracts and more low value tracts were leased in subsequent sales. The trend of decreasing average bids began, however, in 1980, well before the start of areawide leasing. This appendix concludes that such variations in the average bid do not indicate a violation of the fair market value requirement. This provision does not require the Secretary to maximize bonus revenues by withholding tracts while their value appreciates. (In addition, the value of many tracts were probably decreasing during the 1983–1984 period because of declining oil price expectations and may have continued to decline in 1985.)

Critics of areawide leasing charged that it would thin competition by spreading a limited number of bidders and their limited capital over far more acreage. Less competition, they claimed, would mean lower bids and violation of the fair market value requirement of section 18(a)(4) of the OCS Lands Act. The Secretary and the courts recognized in 1982 that bonuses might decline under areawide leasing. The court rejected the claim that this meant a violation of the fair market value requirement. Nevertheless, the relationship between the pace of leasing, the number of bids, and the amount paid in bonuses remains a matter of controversy.

This appendix shows that the average number of bids per tract declined during the 1980–1984 period as average bids declined. The percentage of tracts receiving one bid increased while the percentage receiving two or more bids decreased. These trends began before the implementation of areawide leasing and continued in areawide sales. In addition, the sixfold increase in the minimum bid implemented in 1982 would be expected to lead to fewer bids per tract on average. It is difficult, however, to isolate the effects of fewer bids on the bid levels from the effects of declining tract values on the number of bids. Since average bids declined more on tracts receiving more than two bids than on tracts receiving only one or two bids, it is reasonable to conclude that most of the decline in average bids was caused by factors other than competition.

A statistical analysis of leasing and bidding data was performed to determine whether and to what extent the implementation of areawide leasing caused a reduction in bonuses. The conclusion from an approach using well accepted statistical techniques is that there is little evidence that areawide leasing was the primary cause of the substantial decline in bonuses. Further analysis using improved data and more sophisticated methods is needed to overcome important limitations identified in this analysis. The results at this stage, in the analysis, however, indicate that the bonus declines associated with areawide leasing were, in all likelihood, much smaller than the revenue gains from earlier leasing. There is good evidence that the Treasury will come out ahead.

Using the inventory concept, this appendix shows that if oil prices are expected to be stable and past areawide leasing has drawn down the inventory of unleased acreage, then areawide and tract selection procedures could cause similar types and amounts of acreage to be leased in future sales. The patterns of competition, the levels of bids, and the implications for meeting the fair market value requirement would also be similar.

If oil prices and price expectations rise, however, tract selection and areawide leasing procedures could yield different results. If tract selection sales withheld leasable tracts while tract values were appreciating, competition would tend to increase as the value of tracts offered rose. Areawide procedures would allow less appreciation in tract values before they drew bids, thus would cause a smaller increase in the number of bidders.

Dated: August 14, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 85-19884 Filed 8-16-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, D.C. 20503, telephone 202–395–7340.

Title: Annual application
Abstract: The application form provides a summary format that functions as a state application for grant monies from the Historic Preservation Fund
Bureau Form Number: None
Frequency: Annually
Description of Respondents: State or local Governments
Annual Responses: 57
Annual Burden Hours: 5,301
Bureau Clearance Officer: Russell K. Olsen, (202) 523–5133.

Russell K. Olsen,
Information Collection Clearance Officer.
[FR Doc. 85–19718 Filed 8–16–85; 8:45 am]
BILLING CODE 4310–10–M

Illinois & Michigan Canal National Heritage Corridor Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Illinois and Michigan National Heritage Corridor Commission will be held August 28, 1985, beginning at 10 a.m. at the Will-Joliet Bicentennial Park, 201 West Jefferson at Bluff, Joliet, Illinois.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Illinois and Michigan Canal National Heritage Corridor Act of 1984, 98 Stat. 1456, 16 U.S.C. 461 to implement and support the conceptual plan.

Matters to be discussed at the meeting will include a temporary headquarters location, the status of interpretive contracts, and an update on current funding.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402–221–3481 (FTS 864–3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: August 7, 1985.

Randall R. Pope,
Acting Regional Director, Midwest Region.
[FR Doc. 85–19740 Filed 8–16–85; 8:45 am]
BILLING CODE 4310–70–M

North Country National Scenic Trail Advisory Council; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the North Country National Scenic Trail Advisory Council will be held September 7–8, 1985, beginning at 8:30 a.m. on September 7 at the Pittsburgh Airport Hilton Inn, Parkway West (State Route 60) at White Swan Park, Pittsburgh, Pennsylvania.

The council was originally established on November 28, 1980, pursuant to provisions of the National Trails System Act, 82 Stat. 919, 16 U.S.C. 1244 et seq., to advise the Secretary of the Interior on matters relating to the administration and development of the North Country National Scenic Trail.

Matters to be discussed at the meeting will include strategies for implementing the comprehensive management plan for the North Country National Scenic Trail and the status of development and management of the trail in each State.

The meeting will be open to the public. Interested persons may submit written statement to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from Thomas L. Gilbert, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402–221–3481 (FTS 864–3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: August 7, 1985.

Randall R. Pope,
Acting Regional Director, Midwest Region.
[FR Doc. 85–19739 Filed 8–16–85; 8:45 am]
BILLING CODE 4310–70–M

Bureau of Reclamation

[INT–FES 85–29]

Tucson Aqueduct—Phase B, Central Arizona Project, AZ; Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a final environmental statement on the environmental consequences of the construction and operation of Phase B of the Tucson Aqueduct and its associated electrical transmission system. The Tucson Aqueduct—Phase B is the last segment of the Central Arizona Project aqueduct system. It will convey Colorado River water to Indian and non-Indian agricultural, municipal, and industrial water users in Pima County, Arizona.

Copies of the statement are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7425, Bureau of Reclamation, Washington, D.C. 20240, Telephone: (202) 343–4991
Library Branch, Division of Management Support, Engineering and Research Center, Room 450, Building 67, Denver Federal Center, Denver, CO 80225, Telephone: (303) 234–3019
Office of the Regional Director, Bureau of Reclamation, P.O. Box 427, Boulder City, NV 89005, Telephone: (702) 293–8411
Arizona Projects Office, Bureau of Reclamation, 23636 N. 7th Street, Phoenix, AZ 85024, Telephone: (602) 870–6767

Libraries

Phoenix, City Library, 12 East McDowell Road, Phoenix, AZ 85004
Tucson City Library, 200 South 6th Avenue, Tucson, AZ 85701.

Single copies of the final statement may be obtained on request to the Director, Office of Environmental Affairs, or the Regional Director at the above addresses. Please refer to the statement number.

Dated: August 14, 1985.

Terence Martin,

Acting Director, Office of Environmental Project Review.

[FR Doc. 85-19745 Filed 8-16-85; 8:45 am]

BILLING CODE 4310-09-M

Bedias Project, TX; Intent To Prepare an Environmental Statement and To Hold an Environmental Scoping Meeting; Correction

This document corrects a notice of intent to prepare an environmental statement on the Bedias Project, Texas, that appeared on page 32121 of the **Federal Register** of Thursday, August 8, 1985 (50 FR 32121). This action is necessary to correct the date a draft environmental statement is scheduled to be filed with the Environmental Protection Agency and be available for review and comment. The meeting date and place remain the same for the scoping meeting: September 5, 1985, Madisonville, Texas, in the Madisonville High School Auditorium, At 7:00 p.m.

Filing Date: The correct date that the draft environmental statement is scheduled to be filed with the Environmental Protection Agency and be available for review and comment is June 1988.

Dated: August 13, 1985.

Clifford Barrett,

Acting Commissioner.

[FR Doc. 85-19687 Filed 8-16-85; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 297 (Sub-7)]

Motor Carrier Rate Bureaus; Expansion of Collective Ratemaking Territory

AGENCY: Interstate Commerce Commission.

ACTION: Notice of withholding of disposition.

SUMMARY: Six motor carrier rate bureaus filed petitions seeking approval to expand the scope of the respective territories in which they publish tariffs and engage in collective activities. All petitions raised issues similar to those discussed in *Rocky Mountain Carriers—Agreement—Expansion to Nationwide Scope*, 48 FR 53192 (November 25, 1983). The rate bureaus were concerned that Commission action in *Rocky Mountain Carriers, supra*, prior to action on their own similar requests, would put them at a competitive disadvantage in serving their member-carriers that are also members of Rocky Mountain Carriers. In a decision served March 19, 1984 (49 FR 10381), the Commission consolidated the petitions to ensure that any forthcoming relief would be afforded to all bureaus on an equal basis. An oral argument was held on December 4, 1984. In an open voting conference held on May 21, 1985, the Commission voted (1) to withhold disposition of this proceeding and to hold the matter in abeyance pending approval or disapproval of the general commodity rate bureau agreements now before the Commission; and (2) to certify the existing record to Congress.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert G. Rothstein, (202) 275-7912

or

Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the full Commission decision which is available for public inspection at the Office of the Secretary, Room 1227, 12th Street and Constitution Avenue NW., Washington, DC 20423. Copies may be purchased from T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (800) 424-5403, or (202) 289-4357 in the Washington, DC, metropolitan area.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

This notice and the decision are issued pursuant to 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: August 2, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Sterrett joined by Chairman Taylor concurred with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 85-19703 Filed 8-16-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30698]

Burlington Northern Railroad Co.; Trackage Rights Exemption; Missouri-Kansas-Texas Railroad Co.; Exemption

Missouri-Kansas-Texas Railroad Company (MKT) has agreed to grant overhead trackage rights to Burlington Northern Railroad Company (BN) over a 13.11 mile line between Columbus (milepost 419.19) and Galena, KS (milepost 432.30). The trackage rights will be effective on August 6, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: August 6, 1985.

By the Commission.

James H. Bayne,

Secretary.

[FR Doc. 85-19704 Filed 8-16-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30699]

Burlington Northern Railroad Co. Trackage Rights Missouri-Kansas-Texas Railroad Co.; Exemption

Missouri-Kansas-Texas Railroad Company has agreed to grant overhead trackage rights to Burlington Northern Railroad Company between Oswego and Labette, KS, a distance of 6.45 miles. The trackage rights will be effective on August 6, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: August 7, 1985.

By the Commission,

James H. Bayne,

Secretary.

[FR Doc. 85-19705 Filed 8-16-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18; Sub-74X]

The Chesapeake and Ohio Railway Co.; Discontinuance of Service Exemption in Fayette County, WV; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments and Discontinuance of Service and Trackage Rights*, to discontinue service over portions of its Laurel Creek Subdivision extending between milepost 0.0 at Quinnimont and milepost 5.47 near Hemlock Hollow, and between milepost 0.0 near Hemlock Hollow and milepost 0.40 near Layland, a total of 5.87 miles in Fayette County, WV.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation

of service 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. 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 employee affected by the discontinuance of service shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective September 18, 1985, (unless stayed pending reconsideration). Petitions to say must be filed by August 29, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 9, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Rene J. Gunning, 100 North Charles Street, Suite 2204, Baltimore, MD 21201

Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 9, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-19706 Filed 8-16-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12; Sub-95X]

Southern Pacific Transportation Co.; Abandonment in St. Landry Parish, La; Exemption

Applicant had filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 1.70-mile line of railroad between milepost 25.00 near Nuba and milepost 26.70 (end of branch) in St. Landry Parish, LA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service 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. 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 employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective September 18, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by August 29, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 9, 1985: Office of the Secretary, Case Control Branch Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: G.A. Laakos, One Market Plaza, Southern Pacific Building, San Francisco, CA 94105.

In the notice of exemption contains false or misleading information, use of the exemption is void ab initio.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 12, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-19707 Filed 8-16-85; 8:45 am].

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Pollution Control; Lodging of Preliminary Settlement Agreement Pursuant to the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act; Conservation Chemical Co. et al.

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on August 2, 1985 a proposed Preliminary Agreement in *United States* v. *Conservation Chemical Company, et al.*, Civil Action No. 82-0983-CV-W-5, was lodged with the United States District Court for the Western District of Missouri. The proposed Preliminary Agreement concerns a lawsuit filed under section 7003 of the Resource Conservation and Recovery Act (RCRA) and sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The Preliminary Agreement requires the defendant to implement a remedy at the Conservation Chemical Company hazardous waste landfill in Kansas City, Missouri, pursuant to RCRA and CERCLA. The agreement also gives to parties who have not signed the Preliminary Agreement a thirty-day period within which to join in the settlement of the lawsuit. Pursuant to the agreement, the defendants will undertake installation, construction, and maintenance of necessary pollution control equipment in accordance with a schedule set forth therein. Further, defendants are required to make restitution to the United States of $500,000 for investigatory and enforcement costs incurred prior to and during the course of the litigation.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Conservation Chemical Company, et al.*, D.J. Ref. 90-7-1-8.

The proposed Preliminary Agreement may be examined at the office of the United States Attorney, Western District of Missouri, 549 U.S. Courthouse, 811 Grand Avenue, Kansas City, Missouri, and at the Office of the Regional Counsel, Region VII, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas. Copies of the Preliminary Agreement may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed Preliminary Agreement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-19744 Filed 8-16-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Application No. D-4337 et al.]

Proposed Exemptions; Richard Dempsey Contracting Co., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefits Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice of Interested Persons

Notice of proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Richard Dempsey Contracting Company, Inc. Profit Sharing Plan and Trust (the Plan) Located in Minneapolis, Minnesota

[Application No. D-337]

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, 1975). 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 (1) the July, 1982 contribution of a contract for deed to the Plan by the Richard Dempsey Contracting Company, Inc. (the Employer); and (2) future sales or contributions to the Plan or contracts for deed by the Employer, provided the contracts for deed would be purchased for no greater than their fair market value if on a sale, and would be valued for contribution purposes at no greater than their fair market value if contributed.[1]

Effective Date: If this proposed exemption is granted it will be effective July 1, 1982.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with two participants, Richard Dempsey and his wife, Donna. the Dempseys are sole shareholders of the Employer and are also directors and officers of the Employee. Richard Dempsey is the trustee of the Plan. The Employer is in the business of purchasing undeveloped real estate and constructing residential dwelling units.

2. The applicant represents that a contract for deed is similar in form to a mortgage but offers greater protections to the vendor/seller than a mortgage. Unlike in the case of a mortgage, the purchaser/vendee does not have legal title to the property being conveyed, but only assumes legal title upon payment in full. Also, in the event of default under the terms of a contract for deed under Minnesota law, depending on the amount paid by the purchaser/vendee, the seller/vendor can gain repossession of the property within 90 days from the date of notice of a default. In addition, the seller/vendor can sell the property and keep the proceeds without liability to the defaulting purchaser/vendee for the amount which was previously paid by the purchaser/vendee on the contract for deed.

3. In May, 1975, the Employer issued a contract for deed to Thomas and Bonnie Stament (the Stament Contract), unrelated third parties, as purchasers/vendees. The Stament Contract had a face value of $40,000 and an interest rate of 8% per annum. In April, 1977, the Stament Contract was sold to the Plan by the Employer for the cash sum of $28,998. Upon the sale to the Plan, the Stament Contract represented approxiamtely 95% of Plan assets. The Stament Contract was paid in full in June, 1981.

4. On May 31, 1978, the Employer issued a contract for deed to Gayanne Lindbloom (the Lindbloom Contract), an unrelated party, as purchaser/vendee. The Lindbloom Contract had a face value of $45,500, and an interest rate of 8% per annum. On June 1, 1979, the Employer sold the Lindbloom Contract to the Plan for the cash sum of $31,850. At the time of the sale, the Lindbloom Contract represented approximately 52% of the Plan's assets. The Lindbloom Contract was paid in full on March 1, 1980.

5. The applicant recognizes that the sales of the Stament Contract and the Lindbloom Contract by the Employer to the Plan constitute prohibited transactions for which the Department is not providing exemptive relief. Accordingly, the Employee represents that it will pay all excise taxes applicable as a result of such prohibited transactions within 60 days of the publication in the **Federal Register** of the granting of the exemption proposed herein.

6. In July, 1975, the Employer issued a contract for deed to Norman and Linda Brody (the Brody Contract), unrelated

[1] Because Richard Dempsey and his wife Donna are the sole shareholders of the Employer and the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

third parties, as purchasers/vendees. The Brody Contract had a face value of $38,500, an interest rate of 8% per annum, and required payment in full in August, 1985. The Brody Contract was on residential property located in Golden Valley, Minnesota. In July, 1982, the Brody contract was contributed to the Plan by the Employer as its contribution for the fiscal year ending January 31, 1982. The contribution was valued at $23,151. This valuation represented a 31.5% discount on the remaining balance due on the contract. Prior to the contribution of the Brody Contract, the Employer contacted C.E. Campion and Associates, Inc., independent real estate investment counselors in Minneapolis, Minnesota, to obtain a written quotation as to the discount to be applied in order to derive the fair market value of the contract. At the time the Brody Contract was contributed, the Plan has assets of $144,500, none of which were invested in Employer-originated land contracts. The Brody Contract represented approximately 16% of total Plan assets upon contribution. On April 29, 1983, the Brody Contract was paid in full.

7. In addition to the contribution of the Brody Contract, the Employer is also requesting an exemption to permit future sales or contributions of Employer-originated contracts for deed to the Plan. The applicant represents that no such contract for deed will be transferred to the Plan unless the fair market value of the contract, when added to the fair market value of any such contract already in the Plan, does not exceed 25 percent of the Plan's assets. In addition, in the case of a sale to the Plan, such contracts for deed will be purchased for no greater than their fair market value, and will be valued for contribution purposes at no greater than their fair market value if contributed. The applicant represents that he will retain a qualified, independent appraiser to value any such future transactions.

8. The applicant represents that in the event any other employee of the Employer becomes eligible to participate in the Plan, a separate account will be established and maintained in the Plan for such participant, so that Mr. and Mrs. Dempsey are the only Plan particpants who would ever be affected by the subject transactions.

9. In summary, the applicant represents that the subject transaction meet the criteria of section 4975 (c) (2) of the Code because: (1) The Brody Contract represented only 16% of Plan assets at the time of contribution, and the fair market value of all contracts sold and contributed to the Plan in the future will not exceed 25% of Plan assets at any given time; (2) the Brody Contract was and all future contracts sold or contributed to the Plan will be valued by a qualified, independent appraiser; and (3) Mr. and Mrs. Dempsey are the only participants who will ever be affected by the subject transactions, and as Plan trustee Mr. Dempsey has determined that the subject transactions were and are in the best interest of the Plan.

Notice to Interested Persons: Because Mr. and Mrs. Dempsey are the sole shareholders of the Employer and the sole participants in the Plan it has been determined that there is no need to notify interested persons. Comments and requests for a public 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.)

Andron, Cechettini & Associates, Inc. Located in Lafayette, California

[Application No. D-4559]

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).

Section I. Exemption for Certain Transactions Involving the Purchase of Interests in AC Investors (the Partnership).

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the purchase of interests in the Partnership by employee benefit plans (Participating Plans), if the general conditions set forth in Section II are met, and if:

1. Each purchase of interests in the Partnership by a Participating Plan is authorized in writing by a fiduciary (the Independent Fiduciary) of each Participating Plan who is independent of the Applicants [2] and their affiliates.[3] If such Independent Fiduciary directs that assets then under management by any of the Applicants be invested in the Partnership, such written authorization by the Independent Fiduciary shall specify such fact and the manner in which such assets shall be transferred to the Partnership.

2. The following persons may not acquire or hold any securities of any company whose securities the Partnership holds (provided, however, that the restrictions contained in this subsection shall not apply to any venture capital company that is controlled by or managed by Covered Persons as defined below and that is subject to the allocation formula described in section 6 of the Summary of Facts and Representations contained in this Proposed Exemption):

(a) The Applicants and officers, directors and general partners of the Applicants.

(b) Affiliates of AC Investors, AC Associates, Mr. Andron and Mr. Cechettini. ("Covered Persons").

3. The terms and conditions of the partnership agreement (the Partnership Agreement) at the formation of the Partnership and at the time of any purchase of an interest covered by this exemption shall be no less favorable to the Participating Plans than the terms and conditions available in arm's-length transactions between unrelated parties.

4. Prior to accepting any investment of assets in the Partnership by a Participating Plan, the Applicants shall furnish or cause to be furnished to each Independent Fiduciary authorizing such investment a copy of this exemption, the Partnership Agreement, a private placement memorandum which describes the respective rights of the general and limited partners to distributions and capital appreciation, services to be preformed by the general partner and the compensation payable therefor, all other material rights and obligations of the partners, and such other information as requested by the Independent Fiduciary.

5. A Participating Plan shall not, after the date of investment of Plan assets in the Partnership, pay to any of the Applicants a separate investment management fee or similar fee with respect to the Participating Plan's assets invested in the Partnership.[3] If a Participating Plan invests in the Partnership during any period for which the Plan has prepaid to any of the Applicants an investment management or similar fee, the amount of such fee will be returned to the Participating Plan. This condition shall not preclude payment by the Partnership to any of the

[2] See representations 1 in the Summary of Facts and Representations.

[3] All future references to the Applicants will also include affiliates of the Applicants.

[4] This condition shall not preclude the payment by the Participating Plans to the Applicants of investment management of other fees with respect to assets not invested in the Partnership.

Applicants of expenses and allocations provided in the Partnership Agreement.

6. No sales commissions or similar fees will be charged by the Applicants to any Participating Plan with respect to its investment in the Partnership. No redemption fee or other penalty shall be charged by the Applicants to any Participating Plan which transfers all or a portion of its Partnership interest as permitted by the Partnership Agreement, except that a Participating Plan must compensate the Partnership for reasonable fees and expenses incurred by the Partnership in its efforts to locate a suitable purchaser for the Participating Plan's Partnership interest.

7. The Partnership Agreement will require that limited partners receive audited annual financial statements with respect to the Partnership as well as such other information as the limited partner (or a Participating Plan's Independent Fiduciary) may reasonably request concerning the operations and investments of the Partnership.

8. No Participating Plan may invest more than 10% of its assets in the Partnership.

Section II. General Conditions.

(a) The Applicants maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Seciton II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of the Applicants, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in section (2) of this paragraph (b) and notwithstanding any provisions of subsections (a) (2) and (b) of section 504 of the Act, the records referred to in paragraph (a) of this Section II are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Partnership of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and,

(D) Any participant or beneficiary of any Participating Plan or any duly authorized employee or representative of such participant or beneficiary.

(b)(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (b) shall be authorized to examine trade secrets of the Applicants, or commercial or financial information which is privileged or confidential.

Section III. Definitions and General Rules.

(a) An "aaffiliate" means a person with one or more of the following relationships to any of the Covered Persons:

(i) Any person directly or indirectly through one or more intermediaries, controlled by such Covered Persons; and

(ii) Officers, directors, highly compensated employees, relatives of or general partners in any such Covered Persons.

(b) The Term "control" means beneficial ownership, by Covered Persons in the aggregate, either directly or through one or more controlled companies, or more than 50% of a company's voting securities.

(c) The term "relative" means spouse and minor children sharing the same household of such Covered Person.

(d) The term "highly compensated employee" means a person whose compensation during the most recent fiscal year exceeds the greater of $30,000 or 10% of the total compensation earned by all employees of the employer.

(e) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Partnership as its proportionate interest in the total assets of the Partnership as calculated on the most recent preceding valuation date of the Partnership.

Summary of Facts and Representations

1. The Applicants are AC Associates, Andron, Cechettini & Associates, Inc, Jonathan Andron, and Ralph Cechettini. AC Associates is a proposed general partnership between Mr. Andron and Mr. Cechettini. Andron, Cechettini & Associates, Inc. is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment manager for pension plans and other clients. Mr. Andron and Mr. Cechettini are officers and sole shareholders of Andron, Cechettini & Associates, Inc.

2. AC Associates will act as general partner of the Partnership, which is a venture capital limited partnership.[5] The Partnership is organized for the purpose of making venture capital investments which shall include but not be limited to buying and selling securities. The Partnership shall be engaged primarily in the business of investing in securities of emerging and developmental stage companies (portfolio companies) and will participate in the management of such companies. The Partnership will commence on the date the certificate of limited partnership is recorded and will continue until 1992, however, AC Associates with limited partner consent may terminate the Partnership at any time.

3. Limited partnership interests in the Partnership will be offered to pension and profit sharing plans which are qualified under sections 401 and 501 of the Code (Participating Plans) and possibly other institutional investors and certain wealthy and sophisticated individuals. AC Associates anticipates that at least four limited partners will each invest a minimum of $1 million in the Partnership with an aggregate offering amount of between $4 million and $20 million. As general partner, AC Associates will contribute one percent of the total Partnership capitalization. A maximum of 10 percent of the assets of any one Participating Plan may be invested in the Partnership. The Partnership will maintain a capital account for each partner which will consist of such partner's capital contribution and the portion of Partnership profits and losses allocated to such account.

4. Prior to any investment in the Partnership, an independent fiduciary (the Independent Fiduciary) of each Participating Plan will receive a private placement memorandum (the Memorandum) which discloses the nature of the offering, capitalization of the Partnership, the estimated use of proceeds of the offering, the investment objectives and policies of the Partnership, the profits and cash flow distributions to be made to partners, the compensation of AC Associates, the federal tax consequences of an investment in the Partnership, a summary of the Partnership agreement, and any additional material information necessary or appropriate to fulfill the requirements for full and fair disclosure under the federal and state securities laws applicable to such an offering.

[5] AC Associates may also act as general partner to other venture capital limited Partnerships. The Department in this proposed exemption is not providing relief for other partnerships established by the Applicants.

5. Limited partnership interests in the Partnership will be offered pursuant to the securities registration exemption provided by Regulation D promulgated under the Securities Act of 1933. No sales commissions will be charged to Participating Plans in connection with the purchase or sale of interests in the Partnership. The Participating Plans will not be charged a redemption fee in connection with the sale by a Participating Plan to the Partnership of interests in the Partnership. The Applicants represent that neither AC Associates nor any of the limited partners in the Partnership has a preferential right as to assignability or redemption of their interests in the Partnership. None of the Applicants will charge a Participating Plan any investment management fee or similar fee with respect to the Participating Plan's assets invested in the Partnership for the entire period of the investment, although the Partnership will pay AC Associates an annual management fee of 2.0 percent (.5 percent paid quarterly) of the net asset value of the Partnership and allocations of gain, pursuant to the Partnership Agreement.[6]

6. Each limited partner shall share in the profits and lossses of the Partnership allocated to the limited partners in the proportion that its capital contributions bear to the total capital contributions of all such limited partners. With respect to the allocation between limited partners and AC Associates, the Applicants represent that AC Associates will be allocated for each fiscal year 20 percent of the Partnership net realized capital gains calculated on a cumulative annual basis less (1) all amounts previously allocated to AC Associates as gain and (2) all amounts previously paid for operating expenses and as compensation to AC Associates. The balance of net realized capital gains and all other items of Partnership profits and losses will be allocated among all partners in proportion to each partner's capital contribution. Capital gains and other items of profits and losses shall be defined and determined in accordance with applicable federal income tax laws.[7]

The limited partners shall have no personal obligation for the debts or liabilities of the Partnership, except that each limited partner shall be obligated to pay its capital contribution. No limited partner shall be liable for the debts or liabilities of any other partner.

7. The Partnership and other partnerships established by the Applicants may have assets available for investment at the same time. The Applicants represent that opportunities for investment in securities of portfolio companies will be allocated by As Associates to the Partnership and other partnerships established by the Applicants, in an equitable manner, without preference given to any partnership. However, the Partnership, as will other partnerships established by the Applicants, will have a preferential right to make "follow-on" investments in its existing portfolio companies which require additional capitalization. If the follow-on investment amount required is in excess of what the Partnership or other partnerships established by the Applicants desire to invest, the other partnerships will be invited to participate in the investment. All such investments offered to partnership's will be allocated pro rata, to the extent of each partnership's available capital. The right to make preferential follow-on investments is represented to be common in venture capital financing.

8. Applicants believe that since they are parties in interest with respect to Participating Plans by virtue of serving as investment managers or service providers to such Plans, it may constitute a prohibited transaction for Participating Plans to invest in the Partnership because the Applicants may derive an economic benefit from compensation and fees received by AC Associates. The Applicants also represent that they will not accept subscriptions for interests in the Partnership from Plans for which they are presently acting as an investment adviser as distinguished from an investment manager within the meaning of section 3(38) of the Act. Accordingly, the Applicants request an exemption from section 406(a) of the Act and section 4975(c)(1) (A) through (D) of the Code to permit Participating Plans to invest in the Partnership.[8] The decision to invest in the Partnership will, in each instance, be made by a fiduciary of a Participating Plan, who is idependent of the Applicants and who has discretionary authority to make investment allocation decisions regarding the portfolio of the Plan.

For Further Information Contact: Mr. Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Shearson Lehman/American Express Inc. and Boston Safe Deposit and Trust Company

[Application No. D-4931]

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)(1) (A) through (D) and 406(b) (1) and (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 lending of securities to Shearson Lehman/American Express Inc. (Shearson) by employee benefit plans for which Boston Safe Deposit and Trust Company (Boston Safe) acts as directed trustee or custodian and securities lending agent and to the receipt of compensation by Boston Safe in connection with these transactions, if the conditions incorporated in the representations set forth below are met.

Summary of Facts and Representations

1. Shearson, a wholly owned subsidiary of American Express Company, is an investment services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States and also a member of the National Association of Securities Dealers. Shearson is one of the largest investment firms in the United States, with consolidated capital (equity and subordinated debt) which, prior to the recent acquisition of Lehman Brothers Kuhn Loeb, totaled nearly $1 billion.

2. Shearson, acting as principal, facilitates stock loans made by institutions to brokerage firms and other entities which need a particular security for a certain period of time in order to satisfy deliveries in cases of short sales or where a broker fails to receive securities it is required to deliver. Shearson is one of the largest institutional equity lenders in the United States, lending stocks equal in value to approximately $2 billion on an average daily basis. In making such loans,

[6] This proposed exemption does not address the receipt of compensation by the Applicants.

[7] See footnote 6 above.

[8] To the extent that, in the ordinary course of business, the Applicants are deemed to be fiduciaries by reason of rendering "investment advice" to a plan within the meaning of regulation 29 CFR 2510.3-21(c)(1)(ii)(B), the presence of an unrelated second ficuciary acting on the investment adviser's recommendation to invest in an Applicant sponsored partnership is not sufficient to insulate the Applicants from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84-03A and 84-04A, issued by the Department on January 4, 1984.) This proposed exemption provides no relief from any of the restrictions of section 406(b) either at the time of a plan's investment or during the operation of the Partnership.

Shearson carefully reviews the credit worthiness of the borrowing brokers.

3. Boston Safe is a wholly owned subsidiary of the Boston Company, Inc., which is a wholly owned subsidiary of Shearson. Boston Safe is organized as a trust company in Massachusetts and specializes in providing fiduciary services to institutions, including serving as trustee or custodian to employee benefit plans. Since 1981, Boston Safe also has been offering securities lending services to institutions. As of August 31, 1983, Boston Safe served as securities lending agent for four pension funds and two college endowments, representing about $2.1 billion in lendable securities. As securities lending agent, Boston Safe selects the brokers to whom securities are lent, negotiates the terms of the loans, assures that the required collateral is received by Boston Safe and that adequate levels of collateral are maintained. All of Boston Safe's procedures for lending securities are designed to comply with the applicable conditions of Prohibited Transaction Exemption (PTE) 81-6 and PTE 82-63.[9]

4. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee in addition to any interest, dividends or other distributions paid on those securities. The lender generally requires that the security loans be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities such as U.S. Government or Federal Agency obligations or certain bank letters of credit. When cash is the collateral, the lender generally invests the cash and rebates a portion of the earnings on the collateral to the borrower. The "fee" received by the lender would then be the difference between the earnings on the collateral and the amount of rebate paid to the borrower. Where a loan of securities is collateralized with Government or Federal Agency securities or bank letters of credit, a fee is paid directly by the borrower to the lender. Institutional investors often utilize the services of an agent in the performance of their securities lending transactions. The lending agent is paid a fee for its services which may be calculated as a percentage of the income earned by the investor from its securities lending activity.

5. Boston Safe requests an exemption for the lending of securities owned by certain pension plans for which it serves as directed trustee or custodian (client-plans) to Shearson, following disclosure of its affiliation with Shearson, under either of two arrangements described as Plan A and Plan B and for the receipt of compensation in connection with such transactions. Boston Safe will have no discretionary authority or control over the investment decisions of these plans. Its discretion will be limited to activities such as negotiating the terms of the securities loans with Shearson and investing any cash collateral on the loans. Because Shearson is the parent company of Boston Safe, the lending of securities to Shearson by plans for which Boston Safe serves as trustee or custodian may be outside the scope of relief provided by PTE 81-6 and PTE 82-63.[10]

6. When a loan is collateralized with cash, Boston Safe will invest the cash in short-term securities or interest-bearing accounts and will rebate a portion of the earnings to Sharson on behalf of the plan. Shearson will pay a fee to the lending plan based on the value of the loaned securities where the collateral consists of obligations other than cash. Under both Plan A and Plan B, the plan will pay a fee to Boston Safe for providing lending services to the plan which will reduce the income earned by the plan from the lending of securities to Shearson. The plan and Boston Safe will agree in advance to this fee which will represent a percentage of the income the plan earns from its lending activities. Several safeguards, described more fully below, are incorporated in the application in order to ensure the protection of the plan assets involved in the transactions. In addition, the applicant represents that each of the two arrangements incorporates the relevant conditions contained in PTE 81-6 and PTE 82-63.

7. *Plan A.* A fiduciary of a client-plan who is independent of Boston Safe and Shearson must sign a Securities Lending Authorization before the plan may participate in Boston Safe's securities lending program. This authorization describes the operation of the lending program and allows Boston Safe to lend securities held by the client-plan to securities brokers, including Shearson, as selected by Boston Safe. The authorization also sets forth, in an attachment, the basis and rate for Boston Safe's compensation from the plan for the performance of securities lending services.

8. The independent fiduciary also must sign a Shearson Lending Authorization before Boston Safe may include security loans to Shearson in the lending activities of the client-plan. The Shearson Lending Authorization will specify, in an attached exhibit, the method of determining the daily securities lending rates (fees and rebates) and the maximum rebate rate payable to Shearson. A client-plan may terminate both the Securities Lending Authorization and the Shearson Lending Authorization at any time.

9. Boston Safe, as securities lending agent, will negotiate a broker loan agreement (basic loan agreement) with Shearson on behalf of a client-plan. An independent fiduciary of the client-plan will approve the terms of the agreement before that fiduciary executes the Shearson Lending Authorization. The basic loan agreement will specify, among other things, the right of the client-plan to terminate a loan at any time (subject to the customary notification period) and the plan's rights in the event of any default by Shearson. The agreement will explain the basis for compensation to the plan for lending securities to Shearson under each category of collateral. The agreement also will contain a requirement that Shearson must pay all transfer fees and transfer taxes related to the security loans.

10. Before entering into a basic loan agreement, Shearson will furnish its most recent available audited and unaudited financial statements to Boston Safe, who, in turn, will provide the statements to a client-plan before the plan is asked to approve the terms of the agreement. The agreement will contain a requirement that Shearson must promptly notify lenders at the time of a loan of any material adverse changes in its financial condition. If any such changes have taken place, Boston Safe will request that an independent fiduciary of the plan approve the loan in view of the changed financial condition.

11. The client-plan and Boston Safe will agree to the fee Boston Safe will receive for its services as lending agent prior to the commencement of any lending activity. The agreement by Boston Safe to provide securities lending services to a client-plan will be in

[9] PTE 81-6 (46 FR 7527, January 23, 1981) provides an exemption under certain conditions from section 406(a)(1) (A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a registered broker-dealer or a bank which is a party-in-interest.

PTE 82-63 (47 FR 14804, April 6, 1982) provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities.

[10] Condition 1 of PTE 81-6 requires, in part, that neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction.

PTE 82-63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of the Act.

writing and subject to prior written approval of a fiduciary of the client-plan who is independent of Shearson and Boston Safe.[11] The agreement will allow termination by the plan without penalty to the plan within five business days of written notice. Before entering into an agreement, Boston Safe will provide the plan with any reasonably available information which it believes is necessary for the plan to make a determination whether to enter into or renew the agreement and such other information as the plan may request.

12. Each time a plan loans securities to Shearson pursuant to the basic loan agreement, Shearson and Boston Safe will execute a designation letter specifying, in part, the securities to be loaned, the necessary amount of collateral, the fee or rebate payable, and any special delivery instructions. The terms of each loan will be at least as favorable to the client-plan as those of an arm's-length transaction would be between unrelated parties.

13. Boston Safe will credit to the account of the client-plan all interest, dividends and the like on the loaned securities, including distributions and rights of any kind. The basic loan agreement will provide that the plan may terminate any loan at any time. Upon a termination, Shearson will deliver the loaned securities back to the client-plan within five business days of written notification. If Shearson fails to return the securities within the designated time, the client-plan has certain rights that it may exercise under the agreement.

14. Boston Safe will establish each day a written schedule of lending fees and rebate rates in order to assure uniformity of treatment among borrowing brokers and to limit the discretion Boston Safe would have in negotiating securities loans to Shearson. Loans to all borrowers on that day will be made at rates on the daily schedule or at rates which may be more advantageous to the client-plans. In no case will loans be made no Shearson at rates below those on the schedule. The daily rate schedule will be based on two variables: The current value of short-term funds, and market conditions as reflected by demand for securities by borrowers other than Shearson.

15. Boston Safe will also adopt a maximum daily rebate rate for cash collateral payable to Shearson on behalf of a plan. This maximum rebate will not exceed a stated percentage of the mean between the bid and asked quotations of the "brokers call rate" published daily in the Wall Street Journal for the previous day. Moreover, when cash is used as collateral, the daily rebate rate will always be at least 50 basis points lower than the rate of return available to Boston Safe from authorized investments for cash collateral.[12] If interest rates rise, the rebate rate applicable to Shearson will never be increased above the daily rate at which a loan was originally made. Boston Safe will submit the formula for determining the maximum daily rebate rate to an independent fiduciary of a client-plan for approval before lending any securities to Shearson on behalf of the plan.

16. For collateral other than cash, the rate charged by Boston Safe the previous day is reviewed for competitiveness. Based on the demand of the marketplace, this daily fee tends to remain constant and is currently one percent of the current value of the collateral. Because 50 percent or more of securities loans by client-plans will be to unrelated brokers or dealers, the competitiveness of Boston Safe's rate schedule will be continuously tested in the marketplace. Accordingly, loans to Shearson should result in competitive rate income to the lending client-plan.

17. Boston Safe will loan securities available for lending to borrowers on a first come, first served basis. This will provide additional assurance of uniformity of treatment among borrowing brokers.

18. Shearson will make a guarantee to each lending client-plan that the plan will incur no loss on its loans of securities to Shearson. Accordingly, Shearson will assure the plan that the rate of return on each loan will at a minimum equal the transactional cost to the plan of lending secrutites to Shearson. The applicant contends that, as a result of this guarantee, the rate of return earned by the plan from lending to Shearson will in total exceed the return from lending securities to other brokers.

19. Boston Safe will receive collateral from Shearson by physical delivery or book entry in a securities depository by the close of business on the day the loaned securities are delivered to Shearson. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government of its agencies or irrevocable bank letters of credit issued by the person other than Shearson or its affiliates. The market value of the collateral on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The basis loan agreement will give the client-plan a continuing security interest in and a lien on the collateral. Boston Safe will monitor the level of the collateral daily to ensure that it is maintained at no less than 102 percent. If the market value of the collateral falls below 102 percent of that of the loaned securities, Boston Safe will require Shearson to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

20. A client-plan that loans securities to Shearson will receive a weekly report with which to monitor lending activity, rates on loans to Shearson compared with loans to other brokers, and the level of collateral on the loans. The weekly report will show, on a daily basis, the market value of all outstanding security loans to Shearson and to other borrowers as compared to the total collateral held for both categories of loans.

21. The weekly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The weekly report also will state, on a daily basis, the rates at which securities are loaned to Shearson compared with those at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

22. Boston Safe also will send a monthly report to each client-plan participating in the lending program. The monthly report will provide a list of all security loans outstanding and closed for a specified period. The report will show each security loaned, the number of shares involved, the value of the security for collateralization purposes, the current value of the collateral, the rate at which the security is loaned, and the number of days the security has been on loan.

23. Only client-plans with assests having an aggregate market value of at least $50 million will be permitted to loan securities to Shearson. The applicant maintains that this restriction is intended to assure that any lending to Shearson will be monitored by an independent fiduciary of above average

[11] This closely parallels conditions c and d of PTE 82-63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary."

[12] These short-term investments include repurchase agreements, certificates of deposit, Treasury bills and an internal Boston Safe fund (the Short-term Investment Fund) used by pension and endowment clients of Boston Safe to invest their overnight cash.

experience and sophistication in matters of this kind.

24. Boston Safe will record on audio tape all telephone traffic between its securities lending department and all borrowers, including Shearson. The telephone tapes will be retained for a period of at least six months. This recording procedure will enable client-plans and the Department to review Boston Safe's adherence to its policy of lending securities at or above the daily specified rates to the first interested borrower.

25. *Plan B.* Shearson will directly negotiate "exclusive borrowing" agreements with client-plans for which Boston Safe serves as directed trustee or custodian. Under such an agreement, Shearson will have exclusive access for a specified period of time to borrow certain securities of a client-plan pursuant to certain conditions. Boston Safe will not participate in the negotiation of the agreement. The involvement of Boston Safe will be limited to such activities as handling the movement of borrowed securities and collateral and investing or depositing any cash collateral and supplying the plans with certain reports.

26. Upon delivery of loaned securities to Shearson, Boston Safe, as securities lending agent for a plan, will receive from Shearson the same day by physical delivery or book entry in a securities depository collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable bank letters of credit. The market value of the collateral on the preceding day will be at least 102 percent of the market value of the loaned securities. Boston Safe will monitor the level of the collateral daily and, if its market value falls below 102 percent, will require Shearson to deliver sufficient additional collateral on the following day. Boston Safe will provide a weekly report to the client-plan showing, on a daily basis, the aggregate market value of all outstanding security loans to Shearson and the aggregate market value of the collateral.

27. Before entering into an agreement, Shearson will furnish to the plan the most recent audited and unaudited statements of its financial condition. Further, the agreement will contain a representation by Shearson that for each time it borrows securities, there have been not material adverse changes in its financial condition.

28. In exchange for the exclusive right to borrow certain securities from a client-plan, Shearson will pay the plan either a flat fee of a minimum flat fee plus a prior negotiated percentage based on the total balance outstanding of borrowed securities. In light of this fee arrangement, all earning generated by cash collateral will be returned to Shearson. Boston Safe will credit to the account of the plan all interest, dividends or other distributions on any borrowed securities.

29. The "exclusive borrowing" agreement may be terminated by either party to the agreement at any time. Upon termination, Shearson will deliver any borrowed securities back to the plan within five business days of written notice of termination. If Shearson fails to return the securities or equivalent, the plan has certain rights under the agreement. Shearson will indemnify the plan against any losses due to its use of the borrowed securities equal to the difference between the replacement cost of the securities and the market value of the collateral on the date a loan is declared to be in default.

30. Boston Safe will receive a fee for its lending services which will be computed as a percentage of the income earned by the client-plan from its securities lending activity. The plan and Boston Safe will agree in advance to the fee. The agreement for Boston Safe to provide securities lending services to the client-plan will be in writing and subject to prior written approval of a plan fiduciary who is independent of Shearson and Boston Safe. The agreement will allow termination by the plan within five business days of written notice without penalty to the plan except for the return to Shearson of part of the flat fee paid by Shearson to the plan, if the plan also has terminated its "exclusive borrowing" agreement with Shearson. Before entering into an agreement with a client-plan to provide securities lending services to the plan, Boston Safe will furnish to the plan any reasonably available information which it believes is necessary for the plan to determine whether to enter into or renew the agreement.

31. In summary, the applicant represents that the described transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) Plan A requires approval of the basic loan agreement and the Shearson Lending Authorization by a plan fiduciary independent of Shearson and Boston Safe before a client-plan lends any securities to Shearson, while under Plan B Shearson will directly negotiate "exclusive borrowing" agreements with a client-plan; (b) the lending arrangements will permit the client-plans to benefit from Shearson's substantial market position as a securities lender and will enable the plans to earn additional income from the loaned securities while still receiving dividends, interest and other distributions on those securities; (c) Shearson will provide sufficient information concerning its financial condition to a client-plan before the plan lends any securities to Shearson; (d) the collateral on each loan to Shearson will be at least 102 percent of the market value of the loaned securities, which exceeds the 100 percent collateral required under PTE 81–6, and will be monitored daily by Boston Safe; (3) Boston Safe will furnish a weekly report and a monthly report to the client-plans so that an independent fiduciary may monitor a plan's lending activity to Shearson in comparison with the lending to other brokers; (f) security loans to Shearson, under Plan A, will not exceed 50 percent on average of the total loan volume, so that the competitiveness of the daily rate schedule may be tested; (g) only client-plans for which Boston Safe serves as directed trustee or custodian will lend securities to Shearson; (h) the terms of each loan will be at least as favorable to the plans as those of an arm's-length transaction between unrelated parties; and (i) all the procedures under Plans A and B will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–7902. (This is not a toll-free number.)

Gulf and Western, Inc. Commingled Trust for Pension and Profit Sharing Plan—the Catalina Employees' Retirement Plan (the plan) Located in Fullerton, California

[Application No. D–5504]

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 18, 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 cash sale by the Plan of certain improved real property (the Real Property) to Kayser-Roth Corporation (the Employer), provided the sales price for the Real Property is not less than its fair market value at the time the transaction is consummated.

Summary of Facts and Representations

1. The Employer, which was formerly known as Catalina, Inc., is a corporation organized and existing under the laws of the State of Delaware. The Employer is a subsidiary of Gulf and Western, Inc. and it maintains an office at 131 North Gilbert Street, Fullerton, California.

2. The Employer established the Plan as of January 1, 1952. On June 30, 1984, the Plan had 1,776 participants and total assets of approximately $4,192,439. The trustee of the Plan (the Trustee) is Manufacturers Hanover Trust Company. Investment decisions for the Plan are made by the Trustee and four investment advisers.

3. In 1956, the Employer conveyed a parcel of land containing 2.05 acres to the Plan as an in kind contribution. The Real Property comprises the Employer's business premises and it consists of a one-story industrial building and the land situated thereunder. On March 1, 1956, the Plan began leasing the Real Property (the Lease) to the Employer for a term ending February 29, 1971 and at an annual rental of $15,360. The Lease contained provisions granting the Employer a renewal option of 15 years' duration. The renewal option was exercised by the Employer on March 30, 1970.[13] The Lease also provided for two additonal renewal periods, each of 15 years' duration.

At the present time, the employer uses the Real Property for the purpose of manufacturing, processing, storing and distributing bathing suits, sweaters, knitwear products, clothing, yarn and similar products. The provisions of the Lease still remain in effect with the exception of the rent which has been increased periodically. In addition to rent, the Employer pays all utility bills and real estate taxes. It also maintains the entire premises but it does not make roof and exterior wall repairs.

4. By order of the Superior Court (the Court) of the State of California, County of Orange (the County) dated October 10, 1983, approximately .21 acres of the Real Property were condemned by the City of Fullerton (the City) for purposes of street widening and making other improvements. The City assessed a total condemnation award (the Award) of approximately $275,000. On November 26, 1984, the County tendered an auditor's warrant to the Trustee in the aggregate amount of the Award. This amount reflected the City's security payment that was originally required to be deposited with the Court. The proceeds were paid over to the Trustee at the Trustee's request. The proceeds, as well as additional recoveries, were to be retained by the Trustee and paid entirely to the Plan.

5. The 1.84 acres of the Real Property that were not part of the eminent domain proceeding were appraised by Messrs. Robert G. Weamer and Fenton E. Cross (Messrs. Weamer and Cross) who are independent appraisers affiliated with the appraisal division of Cushman and Wakefield of California, Inc., located in Los Angeles, California. Mr. Weamer is the manager of the Ontario Appraisal Division; Mr. Cross is a member of the American Institute of Real Estate Appraisers. On February 1, 1984, Messrs. Weamer and Cross placed the fair market value of the Real Property at $1,015,000 and the net annual economic rent at $112,545.

6. As stated briefly above, the Employer requests an exemption to acquire the Real Property from the Plan for its fair market value price as established by Messrs. Weamer and Cross. In addition to purchasing the Real Property, the Employer will pay the Internal Revenue Service the appropriate excise taxes that may be due by reason of the continuation of the Lease beyond June 30, 1984 within 60 days of the granting of the proposed exemption. The Employer will also make additional contributions to the Plan in order to bring the Lease payments up to the fair market rental value for the period July 1, 1984 until the time of sale. The Employer further proposes that the rental deficiency include interest payments that are based on an appropriate rate as determined by the Trustee.

7. The Trustee will serve as the independent fiduciary for the proposed transaction. The Trustee represents that its loans and deposits to the Employer's parent—Gulf and Western, comprise less than one percent of the Trustee's outstanding loans and total deposits as of December 31, 1984. The Trustee also states that there are no officers of the Employer or of Gulf and Western sitting on the Trustee's board of directors.

The Trustee believes the proposed sale of the Real Property by the Plan to the Employer is an appropriate transaction for the Plan and in the best interests of the participants and beneficiaries. In addition, the Trustee represents that the value as determined by the appraisal is fair and reasonable. The Trustee will review the proposed sales transaction at least five days prior to the date of the sale to determine whether the sales price reflects the fair market value of the Real Property and otherwise ensure that the Plan is made whole.

8. In summary, it is represented that the proposed transaction satisfies the conditions of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sales price will be based on the fair market value of the Real Property as established by an independent appraisal; (c) the Plan will receive the entire Award including any future recoveries; and (d) the Trustee, which will serve as the independent fiduciary for the Plan, believes the sale is an appropriate transaction for the Plan and in the best interests of its participants and beneficiaries.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Kellam & Klein, D.O., P.C., David Kellam, D.O., Defined Benefit Plan & Trust (the Kellam Plan) Kellam & Klein, D.O., P.C., Donald Klein, D.O., Defined Benefit Plan & Trust (the Klein Plan) (Collectively the Plans) Located in Metamora Township, Lapeer County, Michigan

[Application No. D-6072 and D-6073]

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 sale by each of the Plans of a one-half interest in a parcel of unimproved real property (the Property) constituting 93.077 acres in Metamora Township, Lapeer County, Michigan to David Kellam, D.O. (Dr. Kellam) and to Donald Klein, D.O. (Dr. Klein) as tenants in common for a purchase price in cash of $52,500 for each Plan, provided that the price received is no less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plans are both defined benefit pension plans. Kellam and Klein, D.O., P.C., a Michigan corporation, is the employer of Dr. Kellam and Dr. Klein and the sponsor of the Plans (the Plans' Sponsor). Dr. Kellam is an owner of a 33⅓% interest in the Plans' Sponsor and is the sole participant and trustee of the

[13] The exemption application states that the Lease has satisfied the conditions of section 414(c)(2) of the Act. However, the Department expresses no opinion on whether these provisions have been met.

Kellam Plan. Dr. Klein is an owner of a 33⅓% interest in the Plans' Sponsor and is the sole participant and trustee of the Klein Plan. Accordingly, Drs. Kellam and Klein are parties in interest to their respective Plans. As of June 30, 1983, the Kellam Plan had assets of $492,546.40, and the Klein Plan had assets of $568,383.80. The Property constitutes approximately 10 5% of the assets of the Kellam Plan and 9.1% of the Klein Plan.

2. The Property consists of lots #1, #2, and #3 containing 6.615, 30.659, and 55.803 acres respectively. The Plans each acquired in August 1984 a one-half interest in the Property through a rollover contribution from a prior pension plan for $105,000, which was the appraised value on July 18, 1983. It is represented that the Property provides no income to the Plans and that the Plans have received no offers, other than the subject transaction, to purchase the Property nor are any anticipated. The Property adjoins land currently owned by the Plans' Sponsor.

3. Dr. Kellam and Dr. Klein each propose to purchase as tenants in common a one-half interest in the Property from their respective Plans for a cash price of $52,500 from each doctor. It is represented that in addition Drs. Kellam and Klein will pay all fees associated with the sale and will pay to the Plans, as part of the purchase price any costs such as real estate taxes which the Plans have incurred during the time the Property was held.

4. Mr. Roy J. Holden (Mr. Holden) of R.J. Holden & Associates, 16 E. High Street, Metamora, Michigan, has appraised the market value of the Property. On January 31, 1984, Mr. Holden estimated the value of the Property at $105,000 based on the real estate assessed values of the Property for 1983. As of April 16, 1985, Mr. Holden states that the actual fair market value of the Property is $96,500 based on comparable sales which indicated prices below tax assessment values.

It is represented that Mr. Holden is independent, as he has no present or contemplated future interest in the Property and neither his employment to make the appraisal nor the compensation is contingent on the appraised value of the Property. It is also represented that Mr. Holden is qualified to make such valuations of the Property as a Certified Appraiser-Senior of the American Association of Certified Appraisers with fifteen years of experience in appraising residential, multiple, farm, vacant, commercial, and industrial properties in Lapeer and surrounding counties in Michigan. Mr. Holden states that the current zoning of the Property is R–2 Residential which allows one acre building sites, but that the current use of the Property is agricultural with no change in use foreseen. Mr. Holden maintains that the Property does not presently warrant any additional premium value even though the Property adjoins land currently owned by the Plans' Sponsor.

5. In summary, Drs. Kellam and Klein represent that the proposed sale meets the statutory criteria of section 408(a) of the Act because:

(a) The proposed transaction is a one time sale for cash;

(b) The proposed transaction will enable the Plans to divest of an asset which produces no income;

(c) The Plans will receive cash proceeds from the sale which can be invested to produce income.

(d) The Plans will receive a purchase price for the Property, which is no less than the fair market value of the Property;

(e) The Plans have received no other offers to purchase the Property; and

(f) The Plans will not have to pay any fees associated with the proposed sale transaction and will be paid for costs, such as real estate taxes, which the Plans incurred in holding the Property.

Notice to Interested Persons: Because Drs. Kellam and Klein are the sole participants in their respective Plans to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of propsed exemption to interested persons. Comments and requests for a public hearing are due 30 days after the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Vernon E. Weldon, M.D., Inc. Defined Benefit Pension Plan (the Plan) Located in San Rafael, California

[Application No. D–6113]

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, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of two paintings (the Paintings) to Vernon E. Weldon, M.D., (Dr. Weldon), the Plan's sole participant and trustee, for the greater of the appraised fair market value or the original purchase price for each Painting.[14]

Summary of Facts and Representations

1. The Plan is a defined benefit Plan with one participant, Dr. Weldon, and assets of $518,744. Dr. Weldon is the sole shareholder of the Plan sponsor and is the Plan's trustee.

2. The Plan purchased the Paintings from two galleries in San Francisco in October and November, 1980.[15] One painting, by Robert Surface (the Surface Painting), was purchased on November 21, 1980 from the Tom Luttrell Gallery for $2,400. The other painting, by Robert Gonzales (the Gonzales Painting), was purchased on October 15, 1980 from the Allrich Gallery for $3,700. The applicant represents that the Paintings were purchased as growth assets during a period of high inflation. During a period of low inflation, however, they will not provide much capital appreciation. Dr. Weldon wishes to sell the Paintings out of the Plan and to invest the proceeds in more appreciable, liquid assets.

3. The applicant represents that the Paintings have been stored in a locked and insulated storage room in Dr. Weldon's home.

4. The applicant represents that the Paintings have a limited market and that Dr. Weldon is the most readily available buyer for them.

5. The Paintings were appraised on May 20, 1985 by Carol A. Atieff, A.S.A., an independent fine arts appraiser. She appraised the fair market value of the Surface Painting at $2,250 and the Gonzales Painting at $4,500.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because: (a) This will be a one-time transaction for cash; (b) the Plan will receive the greater of the fair market value or the original purchase price for each of the Paintings; (c) the Plan will be able to invest the proceeds in more appreciable, liquid assets; and (d) Dr. Weldon is the only participant in the Plan, and he desires that the transaction be consummated.

Notice to Interested Persons: Because Dr. Weldon is the sole shareholder of the Plan and the only participant in the Plan, it has been determined that there

[14] Since Dr. Weldon is the sole stock holder of Vernon E. Weldon, M.D., Inc., the Plan sponsor, and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[15] The Department expresses no opinion on whether the purchase and holding of the Paintings violated section 4975 of the Code.

is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8884. (This is not a toll-free number.)

Don C. Quast, M.D. Professional Association Defined Benefit Pension Plan and Trust (the Plan) Located in Houston, Texas

[Application No. D-6205]

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 (1) the proposed sale by the Plan of certain real and personal property to Don C. Quast Enterprises, Inc. (Enterprises), a corporation wholly-owned by Don C. Quast, M.D., P.A. (the Employer), the sponsor of the Plan; (2) the proposed extension of credit by the Plan to Enteprises with respect to the sale; and (3) the guarantee of the obligations of Enterprises to the Plan by the Employer and by Don C. Quast and his wife, Audrey C. Quast, as individuals; provided that the terms and conditions of the transactions are no less favorable to the Plan than those available in like transactions with unrelated parties, and that the sale price of the property is no less than its fair market value on the date of sale.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan which had nine participants and net assets of approximately $1,523,533 as of December 31, 1982. The trustee (the Trustee) and decision-maker with respect to Plan investments is Don C. Quast, M.D. The Trustee and his wife, Audrey C. Quast, are the sole shareholders of the Employer. The Employer is in the business of providing medical services.

2. In 1978, the Plan invested $60,000 in a limited partnership interest in Rolf's Restaurant (the Partnership), a restaurant and real estate business located in Taos, New Mexico. The general partner (the General Partner) of the Partnership was Mr. Rolf M. Milke, an individual unrelated to the Plan, the Employer and the Trustee. In October, 1980, the General Partner defaulted on certain loan obligations owned to First State Bank of (the Bank) Taos and other parties, all of which are unrelated to the Plan, the Employer and the Trustee. The loan obligations were secured by certain improved real property (the Real Property), furnishings, fixtures and equipment (collectively, the Furnishings) and a New Mexico liquor license (the Liquor License), all of which were associated with the operation of a restaurant. Upon default by the General Partner, the Bank obtained a judgment against the Partnership and prepared to foreclose on the Real Property, Furnishings and Liquor License (collectively, the Partnership Property). Rather than allowing the Plan to lose its investment in the Partnership, the Trustee determined that the Plan should pay off the Partnership's loan obligations. Upon payment of these obligations on October 10, 1980, totaling $227,962.53, the Plan acquired all right, title and interest to the Partnership Property. Since its acquisition by the Plan, the Partnership Property has generated net income for the Plan of only $13,089.72. The net income is the result of a $14,550 one-year lease to an unrelated party and $1,460.28 in expenses incurred by the Plan with respect to the Partnership Property. Other expenses with respect to the Partnership Property were paid by the Employer. The Real Property has not been leased since 1982.

3. Since the Plan's acquisition of the Partnership Property, the Trustee has been concerned about the Plan's lack of adequate liquidity, the failure of the Partnership Property to provide an adequate rate of return to the Plan, and the need for further investment in improvements and maintenance of the Partnership Property. The Trustee represents that, since 1981, he has made numerous attempts to sell the Partnership Property to unrelated parties. However, he was unable to obtain any offers to purchase the Partnership Property at any amount closely approaching its fair market value.

4. The Partnership Property was appraised on November 13, 1981 by Mark Cowen, S.R.A., an independent appraiser with Robert C. Daigh & Associates, Taos, New Mexico. Mr. Cowen determined the fair market value, as of November 13, 1981, of the Real Property to be $310,000, the fair market value of the Furnishings to be $25,000 and the fair market value of the Liquor License to be $40,000. The Real Property consists of approximately two acres of land improved by a 6,085 square foot pueblo-style restaurant building which includes three dining areas, a bar/lounge, pantry and storage areas, a kitchen and small living quarters in the rear of the building.

Mr. Cowen's appraisals were updated on April 10, 1985 by Mr. G. William Sarsen, an independent fee appraiser also located in Taos, New Mexico. Based upon information in Mr. Cowen's appraisal, Mr. Sarsen's pesonal inspection of the Partnership Property, investigation of comparable sales and analysis of current market trends in the area, Mr. Sarsen states that $300,000 represents the fair market value of the Real Property as of April 10, 1985. Mr. Sarsen states that the decline in value is due to a lack of maintenance and upkeep. The applicants acknowledge the need to invest soon in maintenance and improvement of the Real Property, but state that such investment would further impar the Plan's already limited cash flow.

Mr. Sarsen also determined the value of the Furnishings as of April 10, 1985 to be $24,590 and the value of the Liquor License as of the same date to be $40,000. The applicants represent that Mr. Sarsen is completely independent of the Employer, Enterprises, and the Trustee. The total value of the Partnership Property, as appraised by Mr. Sarsen on April 10, 1985 is $364,590, representing approximately 24% of the Plan's current assets.

5. In order to get the Partnership Property out of the Plan and to avoid further expenses for the Plan, Enterprises proposes to purchase the Partnership Property from the Plan for its appraised value $364,590. Enterprises will pay $164,590 in cash and will execute a ten-year $200,000 promissory note (the Note) payable to the Plan, secured by a first deed of trust on the Real Property. The face amount of the Note constitutes approximately 13% of the Plan's current assets.

In addition, if the Plan incurs any additional expenses for maintenance of the Real Property between June 10, 1985 and the date the sale is consummated, Enterprises will reimburse the Plan, in cash, for the full amount of such expenses. No fees, commissions or other expenses will be paid by the Plan with respect to the sale.

6. The Note will bear interest at the rate of 2% over the prime rate, as adjusted quarterly, of the First National Bank in Albuquerque, New Mexico, and will be payable in 40 equal quarterly installments of $5000 of principal and 40

quarterly unequal installments of interest on the unpaid balance. All payments will be first applied to interest with the balance applied to principal. If for any reason the Real Property securing the Note should decline in value to an amount less than 150% of the outstanding principal loan balance, accelerated payments will be required so as to maintain the collateral at a level not less than 150% of the outstanding balance of the Note. The improvements on the Real Property will be kept fully insured over the term of the Note with the Plan named as beneficiary of such insurance policy to the extent of the outstanding balance and accrued interest on the Note.

7. The Note will be jointly and severally guaranteed by the Employer and by the Trustee and his wife. In addition to the $200,000 principal amount of the Note, the guarantee covers all interest on the Note, attorney's fees, and costs of collection which may be incurred by the Plan with respect to the Note. As of December 31, 1984, the Employer showed total assets of approximately $1,052,066 and stockholders' equity (net assets) of approximately $446,465. The Trustee and his wife each have net assets substantially in excess of $500,000.

8. Mr. A. Macy Smith (Mr. Smith) has been appointed to act as an independent fiduciary for the Plan with respect to the proposed transactions. Mr. Smith, who is a businessman and the trustee of a profit sharing plan and pension plan sponsored by his own companies, represents that he is completely independent of the Employer, Enterprises and the Trustee and that he has discussed his duties, responsibilities and liabilities as an independent fiduciary under the Act with an attorney experienced in ERISA matters. Mr. Smith has twenty-five years of business experience and has served as a consultant to and on the board of directors of many major corporations. Mr. Smith has reviewed the history of the Partnership Property, the appraisals, the Plan's portfolio and financial statements, the needs of the Plan, including its needs for liquidity and diversification, and all documents relating to the proposed sale, extension of credit and guarantee. Based upon this review, Mr. Smith states that the proposed transactions are in the best interest of the Plan and its participants and beneficiaries because of the lack of adequate return to the Plan from this investment. The Partnership Property currently represents approximately 24% of the Plan's assets, which together with other long-term investments held by the Plan, results in inadequate liquidity in the Plan's portfolio. Furthermore, the value of the Partnership Property will continue to decline if substantial investments in maintenance and improvements are not made in the near future. If the exemption is granted, the Plan will have a purchaser for the Partnership Property who is willing to pay its full appraised fair market value. The extension of credit by the Plan is protective of the Plan because the Note will at all times be secured by fully insured real property having an appraised fair market value of at least 150% of the outstanding balance of the Note, and because the personal guarantees of the Note, jointly and severally, by the Employer and by the Trustee and his wife will provide substantial additional security for the Plan. Mr. Smith will monitor all terms and conditions of the sale and the Note, including the quarterly interest adjustments and the value of the Real Property securing the Note, and will take any actions necessary to enforce the rights of the Plan with respect to the proposed transactions.

9. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:

(a) The Plan will be able to divest itself of property constituting approximately 24% of its assets and will be able to reinvest the proceeds in more liquid and profitable investments;

(b) No fees, commissions or other expenses will be paid by the Plan with respect to the sale;

(c) The Plan will receive the appraised fair market value for the Partnership Property, and such amount exceeds the Plan's investment in the Partnership Property;

(d) The Note will at all times be secured by insured real property having an appraised fair market value of at least 150% of the outstanding balance of the Note;

(e) The Note will be guaranteed through the joint and several guarantees of the Employer and of the Trustee and his wife;

(f) An independent fiduciary for the Plan has reviewed the Plan's investment portfolio and liquidity and diversification needs, as well as all of the terms and conditions of the proposed transactions and has determined that the transactions are protective of and in the best interest of the Plan's participants and beneficiaries; and

(g) The terms and conditions of the transactions will be monitored and enforced by the independent fiduciary on behalf of the Plan.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8882. This is not a toll-free number.

General Information

The attention of interested persons is directed to the folllowing:

(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 expressed condition that the material facts and repesentations 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 13th day of August, 1985.

Robert J. Doyle,

Deputy Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-19659 Filed 8-16-85; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-528]

Arizona Public Service Co., et al., Palo Verde Nuclear Generating Station, Unit 1; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a Petition filed under 10 CFR 2.206 by Myron L. Scott on behalf of the Coalition for Responsible Energy Education regarding the Palo Verde Nuclear Generating Station (PVNGS) Unit 1. The Petitioner requested that no license be issued for PVNGS Unit 1 until concerns relating to incentive plans and offsite emergency preparedness for PVNGS, are resolved. As a basis for the Petition, the Petitioner alleged that the incentive plans have not been adequately reviewed for their safety impact and that emergency preparedness of state and local agencies is inadequate since the agencies may be underfunded.

The Staff had considered the Petitioner's allegations and has determined that they do not provide an adequate basis for the relief requested. The reasons are fully described in a "Director's Decision Under 10 CFR 2.206," (DD-85-12), which is available for public inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555, and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell, Road, Phoenix, Arizona 85004

A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland this 9th day of August, 1985.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-19775 Filed 8-16-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix J to 10 CFR Part 50 to the Omaha Public Power District (the licensee), for the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

Environmental Assessment

Identification of Proposed Action

The requested exemptions are related to Section III of Appendix J to 10 CFR Part 50. Section III contains containment leakage testing requirements. Specifically, the license has requested an exemption from paragraph III.D.2(b)(ii) which states "Air locks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such periods at not less than Pa." The licensee has also requested an exemption in regard to performing Type C leakage testing on the isolation valves associated with the Charging Pump Discharge Line (penetration M-3).

These proposed exemptions are responsive to the licensee's letter requesting exemptions dated January 26, 1983.

The Need for the Proposed Action

The existing Personnel Air Lock (PAL) doors are so designed that a full pressure test can only be performed after strong backs (structural bracing) have been installed on the inner door. Strong backs are needed since the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. The strong backs are extremely difficult to install and the outer door must be opened to remove the strong backs. As a result, about 18-24 hours are required to complete a full pressure test of an air lock. Alternately, the licensee proposes to leak test the door seals at 5 psig prior to returning to a plant operating condition requiring containment integrity, and conduct a full presure test on the PAL assembly within 2 weeks. The licensee contends that this proposal will provide adequate assurance of air lock integrity without imposing undue delays on return to power operations.

The containment isolation valves associated with penetration M-3 are part of the charging pump discharge line. The licensee believes that testing is unnecessary because the pressure of the fluid in the line will always be greater than the containment pressure, thereby providing a seal barrier against escape of the containment atmosphere.

Environmental Impacts of the Proposed Action

Our evaluation of the proposed exemption from Appendix J to 10 CFR Part 50 indicates that the granting of the exemptions will not impair containment integrity for the following reasons. If the periodic 6-month test of paragraph III.D.2(b)(i) of Appendix J and the test required by paragraph III.D.2(b)(iii) of Appendix J are current, there should be no reason to expect an air lock to leak excessively just because it has been opened during cold shutdown or refueling. Regarding the charging pump discharge line, the pressure of the fluid in the line will always be greater than the containment pressure, thereby providing a seal barrier against escape of the containment atmosphere.

Accordingly, post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Fort Calhoun Station, Unit No. 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the letter requesting the exemptions dated January 26, 1983, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, 20555 and at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Bethesda, Maryland this 1st day of August, 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 85-19776 Filed 8-16-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan Proposed Model Conservation Standard Amendments; Hearings and Public Comment

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council. (Northwest Power Planning Council).

ACTION: Extension of public comment period and rescheduling of public hearings.

SUMMARY: The Northwest Power Planning Council (Council) recently released for public comment proposed amendments to portions of its Northwest Conservation and Electric Power Plan (Plan) concerning model conservation standards (MCS), set a deadline for receipt of public comments regarding the amendments, and scheduled public hearings (50 FR 30654-61, July 26, 1985). To provide ample opportunity for interested parties to submit public comments, the Council has now extended the deadline for public comment and rescheduled two of the five originally-scheduled hearings.

DATES AND ADDRESSES: The public comment period regarding the proposed MCS amendments will now close at 5 p.m. Pacific time on September 13, 1985 (rather than August 26, as originally announced). Additionally, the public hearings originally set for Seattle, Washington, on August 20 and Missoula, Montana, on August 23 have been changed, resulting in the following final hearing schedule:

- Portland, Oregon, 9 a.m., August 6, 1985, at the Council's central office, 850 S.W. Broadway, Suite 1100, Portland, Oregon.
- Spokane, Washington, 3:30 p.m. to 5 p.m., August 20, 1985, Spokane Convention Center, meeting room A, W. 334 Spokane Falls Blvd., Spokane, Washington.
- Burley, Idaho, 1 p.m., August 22, 1985, at the Burley Inn, 800 N. Overland Ave., Burley, Idaho.
- Seattle, Washington, 9 a.m., September 9, 1985, at the Federal Building, Room 2866, 915 Second Avenue, Seattle, Washington.
- Missoula, Montana, 1:30 p.m., September 13, 1985, at the Missoula Sheraton, 200 S. Pattee St., Missoula, Montana.

The Council currently expects to take final action on proposed MCS-related amendments at its October 9-10, 1985, meeting in Missoula, Montana. The actual date on which the Council will make its final decision will be announced in accordance with applicable law and in accordance with the Council's practice of providing notice of its meeting agendas.

FOR FURTHER INFORMATION CONTACT: Dulcy Mahar, Director of Public Information and Involvement, at the Council's central office (850 S.W. Broadway, Suite 1100, Portland, Oregon, 97205 or 503-222-5161, toll free 1-800-222-3355 in Idaho, Montana, and Washington, or 1-800-452-2324 in Oregon).

Edward Sheets,

Executive Director.

[FR Doc. 85-19689 Filed 8-16-85; 8:45 am]

BILLING CODE 0000-00-M

Losses and Goals Advisory Committee; Meeting

AGENCY: Losses and Goals 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:

- Update on Losses Statement.
- Discussion of production investment policies issue paper.
- Discussion of productivity analysis issue paper.
- Discussion of resident fish substitutions issue paper.
- Other.
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Losses and Goals Advisory Committee.

DATE: August 22, 1985, 9:30 a.m.

ADDRESS: The meeting will be held at the Council's Hearing Room, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Marsh, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-19688 Filed 8-16-85; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14673; File No. 812-6116]

Counsellors Cash Reserve Fund, Inc., et al.; Application for Exemptive Order Permitting Separate Classes of Shares Representing Interests in the Same Portfolio

August 13, 1985.

Notice is hereby given that Counsellors Cash Reserve Fund, Inc. and Counsellors New York Tax Exempt Fund, Inc. (the "Funds"), and their investment advisor Warburg, Pincus Counsellors, Inc. and its parent, E. M. Warburg Pincus & Co., Inc. (collectively with the Funds, as the "Applicants"), each at 466 Lexington Avenue, New York, NY 10017 filed an application on May 14, 1985, requesting an order of the Commission pursuant to section 6(C) of the Investment Company Act of 1940 ("Act") exempting Applicants from the provisions of sections 18(f)(1), 18(g) and 18(i) of the Act to the extent necessary to permit the Funds, and all similar investment companies sponsored in the future by the Funds' investment adviser its parent corporation, to issue and sell separate classes of securities representing interests in their existing and future investment portfolios (including the allocation of voting rights thereto and the payment of dividends thereon) in the manner described below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of their relevant provisions.

According to the application, each of the funds is registered under the Act as an open-end, diversified management investment company, and has a currently effective registration statement. At present, each Fund offers a single class of common stock and a

single investment portfolio consisting of short-term taxable "money market" obligations and short-term tax-exempt debt obligations, respectively. (The Funds' existing and future investment portfolios are sometimes referred to hereinafter as "Portfolios", and the existing classes of shares representing interests in the Funds' existing Portfolios together with each initial class of shares that is created by Applicants in connection with any investment portfolio that is organized by the Applicants in the future are sometimes collectively referred to as "Existing Shares".)

The application states that the Funds' shares will be offered to persons whose assets are held of record by broker-dealers, investment advisers, banks, trust companies or other financial institutions acting in an agency capacity on behalf of their customer accounts. According to the application, all expenses of each Portfolio will be borne pro-rata by the shareholders of the Portfolio in accordance with the number of shares owned by each of them. The Funds' expenses consist of advisory, sub-advisory, administration, custodial and transfer agency fees, as well as other types of operating expenses. None of the Funds has adopted a plan pursuant to Rule 12b–1 under the Act ("12b–1 Plan"), or a shareholder services plan ("Shareholder Services Plan") for support services provided to their customers who are the beneficial owners of shares, and none currently pays its distributor for distribution services.

The Funds believe that it is highly desirable that they be able to offer services which are adapted, to the extent possible, to the investment needs of the particular investor. In order to broaden their range of services, and also to expand their marketing alternatives, the Funds are contemplating the creation of new classes of shares ("New Shares") with the following characteristics. The New Shares would be offered only to or through institutions and could not be purchased by individuals directly from the Funds. Further, except for its class designation and the allocation of certain expenses and voting rights as described below, each class of New Shares would be identical in all respects to one of the classes of Existing Shares. Among other things, the "matched" sets of New Shares and Existing Shares would be subject to the same investment objective, policies and limitations, the same dividend policies and the same purchase and redemption policies. They would differ, however, in that certain classes of Shares would be offered in connection with (1) a 12b–1 Plan adopted by the Fund involved pursuant to Rule 12b–1 under the Act; or (2) a Shareholder Service Plan adopted by the Board of Directors of each Fund involved pursuant to all the requirements of Rule 12b–1 (except those relating to shareholder voting rights and automatic termination of the plan upon its assigment); or (3) no plan at all. (Those 12b–1 Plans and Shareholder Services Plans are sometimes referred to hereinafter as "Plans.") The application states that the adoption and implementation of a Plan by one Fund would be made independently of, and would not be conditioned upon, the adoption or implementation of a Plan by any other Fund. In addition, each Plan would relate only to the shares of a particular Fund.

As described in the application, under each type of Plan, a Fund would enter into servicing agreements ("Servicing Agreements") with institutions concerning the provision of support services to the customers of the institutions who from time to time beneficially own shares which are offered in connection with the Plan ("Customers"). In addition, Servicing Agreements under a 12b–1 Plan would contemplate the provision of distribution assistance by an institution in connection with the Plan. Applicants state that the provision of support services and distribution assistance under the Plans would augment (and not duplicate) the services that are currently provided to the Funds by their service contractors (e.g. investment adviser, sub-investment adviser, administrator, distributor, custodian and transfer agent).

According to the application, under each type of Plan a Fund would pay participating institutions for their services and assistance in accordance with the terms of the Plan and the relevant Servicing Agreement (such payments are referred to hereinafter as "Service Payments"). Service Payments paid to an institution would not exceed 0.75% (on an annualized basis) under a 12b–1 Servicing Agreement, or 0.50% (on an annualized basis) under a Shareholder Servicing Agreement, of the average daily net asset value of those Shares beneficially owned by Customers of the institution with respect to which the institution provides services and assistance under the Servicing Agreement. Further, because a Servicing Agreement necessarily contemplates the provision of services and assistance by an institution to its customers, the funds would not knowingly enter into a Servicing Agreement with an institution in those institutions where the institution invests as principal. Applicants note that under state law and under recent letters of the Comptroller of the Currency, the ability of a bank to accept a fee from an investment company in connection with the investment of the assets of its fiduciary accounts may be restricted, and represent that to the extent that such investments are permitted each Fund will include in their prospectus relevant disclosures about the Comptroller's letters.

According to the application, a Fund's New Shares would represent interests in the same portfolios as its Existing Shares. Under this arrangement, each New and Existing Share in a particular Portfolio, regardless of class, would represent and equal pro-rata interest in the Portfolio and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except that: (1) Each class of New Shares and Existing Shares would have different class designations; (2) each class of shares offered in connection with a Plan would bear the expenses of the Service Payments that were made under the Servicing Agreements that have been entered into with respect to that class; and (3) only the holders of the shares of the class or classes involved would be entitled to vote on matters pertaining to the Plan, and the Servicing Agreements relating to such class or classes (for example, the adoption, amendment or termination of a Plan).

In particular, the application states that the net asset value of all outstanding shares representing interests in the same Portfolio would be computed on the same days and at the same times by adding the value of all portfolio securities and other assets belonging to the Portfolio involved, subtracting the liabilities charged to the Portfolio and dividing the result by the number of that Portfolio's outstanding shares. Further, the gross income of a Portfolio would be allocated on a pro rata basis to each outstanding share in the Portfolio regardless of class, and all expenses incurred by the Portfolio (for example, fees of the investment adviser, sub-investment adviser, administrator, directors, transfer agent, custodian, auditors and legal counsel, officers' salaries, registration and printing expenses, taxes, interest, brokerage fees and commissions, insurance premiums and extraordinary expenses) would be borne on a pro rata basis by such

outstanding shares, except for Service Payments made under a Plan that has been adopted in connection with one or more classes of shares. On the other hand, because of the Service Payments that would be borne by a class or classes of shares that is offered in connection with a Plan, the net income of (and dividends payable to) such class or classes would be somewhat lower than the net income of the "matched" class or classes of shares that is offered without a Plan, and might be somewhat higher or lower than the net income of other classes of shares of the same Portfolio that are offered in connection with a different Plan. Dividends paid to each class of shares in a Portfolio would, however, be declared and paid on the same days and at the same times, and, except as noted with respect to the expense of Service Payments, would be determined in the same manner and paid in the same amounts.

Applicants request an exemptive order pursuant to section 6(c) of the Act to the extent that the proposed issuance and sale of classes of New Shares representing interests in the Funds' existing and future Portfolios, including dividends thereon as described above, might be deemed: (1) To result in a "senior security" within the meaning of section 18(g) of the Act and to be prohibited by section 18(f)(1) of the Act; and (2) to violate the equal voting provision in section 18(i) of the Act. In support of the relief requested, the Funds assert that the issuance and sale of classes of New Shares in their Portfolios permit the Funds to both facilitate the distribution of their securities and expand the scope and depth of their services without assuming excessive accounting and bookkeeping costs or unncessary investment risks.

Applicants assert further that the proposed allocation of expenses and voting rights relating to the Plans in the manner described is equitable and would not discriminate against any group of shareholders. Investors purchasing shares offered in connection with a Plan and receiving the services provided thereunder would bear the costs associated with such services, but would also enjoy exclusive shareholder voting rights with respect to matters affecting that Plan. Conversely, investors purchasing shares that are not covered by such Plan would not bear such expenses or enjoy such voting rights.

In addition, Applicants submit that the requested exemption is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants assert that the proposed arrangement does not involve borrowings and does not affect the Funds' existing assets or reserves. Nor, it is asserted, will the proposed arrangement increase the speculative character of the shares in a Portfolio, since all shares will participate pro rata in all of the Portfolio's income and all of the Portfolio's expenses (with the exception of the proposed Service Payments). Applicants specifically state that all the representations and conditions contained in the application will apply to any future investment portfolio to which the exemptive relief will apply.

Applicants state that although they contemplate that Service Payments maybe made to institutional shareholders that may be deemed to be affiliated persons of the Funds because they own, control or hold with the power to vote 5% or more of the outstanding voting securities of a Portfolio, they are not requesting exemptive relief from section 17 of the Act because they believe that such payments would not be prohibited by that section.

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. The only differences between each class of Shares representing interests in the same Portfolio will relate solely to priorities with respect to: (a) The payment of dividends and such priority will reflect only the impact of the Service Payments made by the Funds under the Plans relating to particular classes of Shares, and (b) voting rights on matters which pertain to Plans (and Servicing Agreements and Service Payments thereunder). In addition, the designation of each class of Shares in a Portfolio would be different.

2. The Plans (including both 12b-1 Plans and Shareholder Services Plans), Servicing Agreements and Service Payments relating to Shares will be approved and reviewed by the relevant Fund's governing board of directors in accordance with the procedures set forth in Rule 12b-1 and, in addition, the 12b-1 Plans (and, to the extent required, the Servicing Agreements and Service Payments thereunder) relating to shares will be approved by those shareholders who are affected in accordance with that Rule. In addition, each governing board of directors, in approving and reviewing payments to an institution pursuant to any 12b-1 Plan or Shareholder Services Plan, will conclude in good faith based on information available to them that such expenditures are competitive with those offered in the industry.

3. Dividends paid by a Fund with respect to each class of shares in a Portfolio will be calculated in the same manner and will be in the same amount as dividends paid by the Fund with respect to each other class of shares in the same Portfolio, except that the expenses of any Service Payments made by the Fund under the Servicing Agreements relating to a class of shares will be borne exclusively by that class.

4. Each prospectus relating to a class of shares that is offered in connection with a Plan will: (a) Describe the services rendered by institutions under Servicing Agreements with respect to those shares and the fees payable by the Applicant involved for such services; and (b) state that the beneficial owners of those shares should read the prospectus in light of the terms governing their institutional accounts.

5. Each Servicing Agreements entered into by a Fund will contain representations by the institution involved that: (a) The institution will provide to its Customers a schedule of any fees charged by it to the Customers relating to the investment of their assets in the class of shares subject to the Servicing Agreements; and (b) the compensation paid to the institution under the Servicing Agreements, together with any other compensation the institution receives from its Customers for services contemplated by the Servicing Agreements, will not be excessive or unreasonable under the laws and instruments governing the institution's relationships with its Customers.

6. Applicants acknowledge that the grant of the requested exemptive order does not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make to institutions pursuant to Plans in reliance on the exemptive order.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 9, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order

disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19757 Filed 8-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22326; File No. SR-Amex-85-27]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc., Relating to Amex Rule 970

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 23, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is proposing to amend Amex Rule 970 to prescribe an earlier deadline for resolution of uncompared options trades after which uncompared options transactions must be closed out in accordance with the Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* Exchange Rule 970 requires that when a disagreement between members or member organizations arising from an uncompared option transaction cannot be resolved by mutual agreement prior to the opening of trading on the first business day following trade date ("T+1"), the parties must close out the transaction promptly, but no later than 3:30 p.m. on T+1. The purpose of Rule 970 is to assure the timely and fair resolution of uncompared options trades.

Under the Rule, members and member organizations are permitted either to recognize or reject uncompared option transaction reports (known as rejected option transaction notices, or "ROTNs") up until 10:00 a.m. on T+1. Since the assistance of a specialist is usually required in resolving ROTNs, members often present specialists with uncompared trades just prior to or at the opening when specialists are otherwise engaged and unable to respond to such requests in a timely manner. This has resulted in items remaining unresolved into the trading day, causing members some difficulty in complying with the 3:30 p.m. close out deadline.

In order to assure that uncompared trades are resolved in a timely fashion, the Exchange proposes to amend the Rule to establish an earlier deadline for resolution of uncompared trades after which members will be required to close out uncompared options transactions. Under the proposed rule change, members and member organizations will be required to recognize or reject all ROTNs no later than one half hour before the opening (i.e., 9:30 a.m. for equities and 8:30 a.m. for interest rate options). This change will provide specialists with ample time to address any questions regarding uncompared trades without impinging on their ability to prepare for the opening of trading.

(2) *Basis.* The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that by facilitating the timely resolution of uncompared options transactions, it will foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities, and foster the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. 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 September 9, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

August 13, 1985.

[FR Doc. 85-19758 Filed 8-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22323; SR-Amex-84-33, SR-CBOE-84-28, SR-NYSE-84-35, SR-PSE-85-19, SR-Phlx-85-18]

Self-Regulatory Organizations; American Stock Exchange, Inc., et al.; Order Approving Proposed Rule Changes, Granting Accelerated Partial Approval of Proposed Rule Change, and Filing and Order Granting Accelerated Approval of Proposed Rule Changes

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the Chicago Board Options Exchange ("CBOE") and the American ("Amex"), New York ("NYSE"), Pacific ("PSE") and Philadelphia ("Phlx") Stock Exchanges have filed with the Commission proposed rule changes to permit the use of cash, cash equivalents, or one or more qualified equity securities, or a combination of the foregoing, as collateral for escrow receipts issued to cover short call positions in broad-based stock index options, in lieu of margin,[3] for a one year pilot period.[4]

II. Background

Section 220.8(a)(4)(i) of Regulation T[5] sets forth the types of collateral that must underlie an escrow agreement issued to cover a short call option position. Under that section, an escrow agreement can be used in lieu of margin for a short call option position if a bank holds the underlying security for the customer writing the option. It is difficult, however, to apply the traditional concept of cover to broad-based index options. First, because the existing options on broad-based stock indexes include from 20 to 1,500 securities it is often impracticable, if not impossible, for an index options writer to be "covered" by having appropriate positions in each security comprising the index. Second, because index options are cash settled instruments, the underlying security position deposited with a bank would never be delivered upon assignment. Accordingly, unlike individual stock options where a call writer would be required to produce the underlying security upon assignment, it may not be necessary to require an index option writer to hold all the underlying securities of the index to be adequately "covered" from an economic risk perspective.

As a result of these problems, from September 1983 to March, 1984 the options exchanges filed rule proposals to permit the use of escrow receipts for short call options positions in broad-based index options if a bank or trust company held for the customer at least ten qualified equity securities,[6] each issued by a different entity, the aggregate market value of which equaled or exceeded, the product of the current index value, the index multiplier, and the number of contracts covered by the collateral, computed at the time the call option contract was written.[7] Under the proposals no single security could respresent more than 15% of the total value of the collateral. In addition, as required by Regulation T for other forms of cover involving the issuance of escrow receipts, the bank or trust company issuing the receipt had to make a commitment to promptly pay the member organization the exercise settlement amount in the event of exercise.

In approving these proposed rule changes,[8] the Commission recognized that the use of such escrow receipts deviated somewhat from traditional concepts of cover because the proposals did not specifically require the value of the securities deposited with the bank issuing the escrow receipt to track changes in the index value. On the other hand, because of the special characteristics of index options[9] and certain safeguards in the proposals that assured that, except in the most unusual circumstances, the value of the collateral underlying the escrow receipts would remain far greater than the obligation of a call writer to deliver upon exercise the difference between the current index value and the exercise price of the option,[10] the Commission concluded that the proposals should be approved.[11] In approving the proposals the Commission also noted that the guarantor (bank or trust company), in addition to the member firm who would be responsible for paying the exercise settlement amount to the Options Clearing Corporations ("OCC"), would have an interest in assuring that the securities deposited were adequate to secure the obligation. The Commission also recognized that, after practicable experience with the proposed system of cover for index options, it may be necessary to make certain changes to the form or use of such receipts.

Following approval of the proposals, the exchanges became aware that escrow receipts for broad-based index options were not being used by market participants to the extent originally envisioned. Moreover, the exchanges found that the requirement that the collateral constitute a "basket of securities," comprised of 10 or more securities, proved impracticable in certain respects for the banks and trust companies issuing the receipts and uneconomic for the broker or customers seeking to obtain such receipts. First, it was found that many of the issuing

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] Notice of the Amex, CBOE, and Phlx proposals was given in the following releases: Securities Exchange Act Release Nos. 21493, November 16, 1984, 49 FR 45994, File No. SR-Amex-84-33; 21399, October 15, 1984, 49 FR 41128, File No. SR-CBOE-84-28; 22258, July 19, 1985, 50 FR 30553, File No. SR-Phlx-85-18. This Release notices the NYSE and PSE proposals which are essentially identical to the proposals of the other three exchanges. In their filings, the NYSE and PSE requested accelerated approval of their proposed rule changes concurrent with the approval of the other exchange proposals which were noticed and published for comment. The Amex, CBOE and NYSE also submitted amendments to their respective rule proposals to indicate that, if approved, the rules will be effective on a pilot basis for a one year period from the date of Commission approval. Both the Phlx and PSE included the one year pilot aspect of the proposals in their original filings.

[4] The Phlx also has proposed, among other things, to permit the use of cash or cash equivalents to cover short put options contracts overlying both broad-based stock index options and individual stock options. The other options exchanges currently have rules permitting such escrow receipts to be used, in lieu of margin, to cover short put positions in individual stock options and broad-based index options. *See, e.g.*, NYSE Rule 431(d)(2)(H)(iv).

[5] 12 CFR 220.8(a)(4)(i).

[6] Essentially, a "qualified security" is one (1) traded on a national securities exchange and substantially meeting the listing requirements of the NYSE or Amex; or (2) one enumerated in the current list of over-the-counter margin stocks published by the Board of Governors of the Federal Reserve System ("FRB"). *See, e.g.*, (CBOE Rule 24.11, Interpretation .03.

[7] Phlx did not submit such a proposal, however, because at that time it did not trade any broad-based index options. Since that time, Phlx has commenced trading a broad-based index option on the Value Line Average Stock Index, approved for trading by the Commission in Securities Exchange Act Release No. 21513, November 21, 1984, 49 FR 46857.

[8] *See* File Nos. SR-CBOE-83-31, Securities Exchange Act Release No. 20619, February 6, 1984, 49 FR 5221; SR-NYSE-83-37, Securities Exchange Act Release No. 20693, February 23, 1984, 49 FR 7485; SR-Amex-84-5, Securities Exchange Act Release No. 20732, March 7, 1984, 49 FR 9665; SR-PSE-84-7, Securities Exchange Act Release No. 21032, June 8, 1984, 49 FR 24964.

[9] *E.g.*, cash settlement and the large number of securities that underlie broad-based index options.

[10] *E.g.*, the requirement that the deposited securities equal the aggregate current index value and the diversification of the collateral in at least 10 stocks with no one security representing more than 15% of the collateral.

[11] The FRB also indicated that an escrow agreement, such as that proposed by the exchanges, could be used as cover in a cash account under § 220.8(a)(4)(i) of Regulation T, 12 CFR 220.8(a)(4)(i). *See* letter from Laura Homer, Securities Credit Officer, FRB, to Richard G. Ketchum, Associate Director, Division of Market Regulation, dated January 27, 1984, which discusses the escrow receipt filing proposed by the CBOE. Substantially similar rule proposals were subsequently filed by the NYSE, Amex and PSE.

banks and trust companies did not have recordkeeping procedures and segregation systems that could be easily applied to the ten stock requirement. Second, the resolution of assignments was complicated and delayed because no cash was readily available to the bank or trust company to meet the cash settlement of an index option position. Third, the fee structures of many banks were such that charges for escrow receipts were based on specific securities movements (*i.e.*, account entries indicating that specific securities were backing, or no longer backing, an escrow receipt). As a result, an escrow receipt collaterized by ten or more stocks is far more expensive to obtain than a traditional escrow receipt relating to a single stock.[12] As a result of these problems, the exchanges submitted their current proposals to the Commission that would change the type of collateral permitted to underlie a broad-based index option escrow receipt. In the exchanges' view, the proposed changes to the current broad-based index option escrow receipt should significantly reduce the operational difficulties previously encountered, reduce the actual costs incurred by customers using such receipts and provide greater flexibility to market participants writing index options positions. In addition, the exchanges believes that the changes will make index option products more competitive with similar futures products.[13]

III. Description of Proposals

Based on their experience with broad-based index option escrow receipts under existing rules, the exchanges submitted their current proposals that would permit such receipts to be collateralized by cash, cash equivalents, or one or more qualified securities, or a combination of the foregoing, for a one year pilot period. For the most part, the rules applicable to the use of broad-based index option escrow receipts under the previously approved rules will apply.[14] In addition, the rules' new definition for "cash equivalents" mirrors the definition provided in Regulation T under § 220.8(a)(3)(ii).[15] The rule change also provides that, in addition to the existing requirements as to a bank or trust companies eligibility to issue such receipts, the issuing entity also must be approved by the OCC if the receipt is to be forwarded to the OCC to meet the member's margin obligations to OCC.[16] Although the collateral may include only one, or even no securities, under the escrow receipt the customer must affirm that the customer was writing index options against a diversified stock portfolio. Finally, in response to a request from the Commission, the exchanges have proposed to implement the rule change for a one year pilot period. In this regard, the exchanges, the Commission and the FRB retain the authority to suspend, terminate or otherwise modify the pilot during the one year period.

In addition to the proposals concerning short call positions on broad-based index options, the Phlx is proposing to permit escrow receipts collateralized by cash or cash equivalents (as defined in § 220.8(a)(3)(ii) of Regulation T) to be used as cover, in lieu of margin, for short put options positions on individual stock options and broad-based index options. Under this aspect of the Phlx propsal the cash or cash equivalents underlying the escrow receipt must have an aggregate market value equal to or in excess of the exercise settlement amount of the put contract.

IV. Discussion

The Commission has concluded that the exchange proposals to permit, for a one-year pilot period, the use of cash, cash equivalents, or one or more qualified securities to collateralize escrow receipts issued to cover short call broad-based index options positions is consistent with the Act.[17] As discussed above, for several reasons the escrow receipts permitted under the existing rule were difficult and costly for market participants to use. As a result, the exchanges have proposed a pilot program they believe will reduce or eliminate many of the problems encountered under the existing rules.

The Commission believes that the wider range of collateral that can be used to underlie the escrow receipts under the proposals should provide greater flexibility for market participants. Moreover, permitting the posting of cash or cash equivalents should help to prevent settlement delays that have occurred under the existing rules. Reducing the minimum number of securities that can collateralize the escrow receipt from ten securities to one security also should eliminate many of the burdens associated with the use of such receipts under the current exchange rules.

In addition to solving certain problems, however, the Commission believes that the proposed changes raise certain concerns about the adequacy of the collateral that will be posted. For example, in approving the initial use of such receipts, the Commission indicated that the requirement that the securities posted as collateral be from 10 different issuers, with none of the securities representing more than 15% of the total value of the collateral, helped to ensure that even substantial decreases in the price of one or two of the deposited securities would not endanger the sufficiency of the collateral. Under the proposed rules, however, this would no longer be the case because it would be sufficient to have one security represent the total collateral underlying the escrow receipt. Furthermore, certain risks associated with the use of such receipts may be enhanced by the possibility that the security deposited is not representative of the market, and thus, its value will not fluctuate in correspondence to the index.[18]

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[12] In this regard, the CBOE indicated that because the bank fees for segregating so many securities and the fees imposed for substituting collateral were costly, institutional investors may choose not to enter into covered index options positions using the current procedures for escrow receipts. Moreover, the CBOE's view, the current escrow receipt is "prohibitively expensive and cumbersome when compared to arrangements for similar products traded on commodities exchanges." CBOE notes, for example, that while a short call position on 100 contracts in the S&P 100, valued at 165, requires a bank to segregate collateral equal to $1,650,000 in no less than 10 equity securities with no one security accounting for $247,500 of the collateral value, in he commodities markets a comparable position in S&P 500 futures contracts would simply require a $60,000 good faith deposit. *See* letter from Mary L. Bender, Assistant Vice President, CBOE, to Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated January 23, 1985.

[13] *See, id.*

[14] For example, the definition for "qualified equity security" under the current rule, noted above, is the same under the proposed rule change. In addition, the rule continues to require that the value of the collateral underlying the escrow receipt be equal to, at least, the aggregate initial position value (*i.e.*, the index value at trade date times the applicable index multiplier times the number of contracts covered by the collateral).

[15] 12 CFR 220.8(a)(3)(ii).

[16] In a separate release issued today, the Commission has approved a rule proposal by the OCC that establishes a pilot program permitting clearing members to deposit escrow receipts, collateralized by one or more securities, cash or cash equivalents, in lieu of margin, on short call broad-based index option positions carried for customer accounts. *See* Securities Exchange Act Release No. 34-22324, August 13, 1985.

[17] The FRB staff also has indicated that it would not object to the use of escrow receipts, collateralized as proposed, as cover in a cash account under § 220.8(a)(4)(i) during the pilot period. Telephone conversation between Laura Homer, Securities Credit Officer, FRB, and Brandon Becker, Assistant Director, Division of Market Regulations, SEC, on July 29, 1985.

[18] In this regard, the Commission notes that the definition of a "qualified security" for purposes of collateralizing the receipt is quite broad, including as it does all marginable securities. *See* note [8], *supra*. While such a broad definition was appropriate so long as the receipt included ten securities, the Commission is concerned that, because the receipt now only may include one security, the definition may be too expansive.

Nevertheless, the Commission believes that the proposed rule changes have enough safeguards to reduce its concerns to permit their implementation on at least a pilot basis. The exchanges, for example, together with OCC, have agreed to carefully monitor the use of index option escrow receipts during the pilot period. In this regard, specific data will be collected on both a quarterly and monthly basis regarding the use of escrow receipts from both the banks issuing such receipts and the brokers accepting the receipts.[19] Moreover, as noted above, under the pilot the exchanges, along with the Commission and the FRB, have the power to suspend, terminate or modify a member organization's ability to accept escrow receipts in lieu of margin for short call index option positions. This power, coupled with careful and continuous monitoring of the pilot, should help to ensure that the risks to the financial community will not be significantly increased under the new rule and that abuses do not occur.

In addition to the above factors, the Commission believes that, because the value of the deposited collateral (whether it be just one security and/or cash or cash equivalents) would have to equal the underlying index value at the time the option is written, its value should continue to be greater than the cash difference between the current index value and the exercise price of the option that must be delivered upon assignment. Further, this value requirement also should continue to ensure that the escrow receipts are not used to obtain increased leverage or to otherwise evade exchange and FRB margin requirements.

Finally, the Commission continues to believe that the industry will police itself with respect to possible risk expose. The bank or trust company obligated to meet the settlement requirements out of the proceeds of the deposited collateral will have an interest in ensuring that the securities deposited are adequate to secure the obligation both initially and throughout the period the option position is open and covered by the escrow receipt. In this regard, we note that when the bank or trust company initially issues the receipt it must certify that the collateral has a market value, at the time the option is written, of not less than 100% of the aggregate current index value. Moreover, the issuing bank or trust company will need to continuously monitor the value of the collateral because, under the terms of the escrow receipt, it is obligated to promptly notify the customer, and request that the collateral be supplemented, if its total market value falls below 55% of the current position value and immediately notify the OCC and the member firm for whose benefit the escrow receipt was issued, if the total market value of the collateral falls to less than 50% of the current position value.[20] Similarly, the member firms who are responsible for paying the exercise settlement amount to the OCC also will have an interest in ensuring the adequate value of the collateral, especially if the escrow receipt is being posted with the OCC to meet the members' margin requirements.[21] Because the issuance and acceptance of the escrow receipt will depend on the bank's and broker's analysis of the adequacy of the underlying collateral to secure the option position, and their duty to monitor the pilot, the Commission believes that expanding the type of collateral that can be used, as proposed, should not significantly increase the risks to the financial community.

The Commission believes that the hedging function served by writing index call options against a diversified portfolio of securities is among the important uses of broad-based stock index options. Thus, it is concerned that the impracticability or impossibility of establishing "covered" short index call options positions, when coupled with the restrictions in many state and federal statutes or regulations, as well as corporate and trust documents, that limit institutional investors to "covered" call options writing,[22] may impede use of index options in this manner. To facilitate this use, the exchanges have proposed, and the Commission is prepared to approve on a pilot basis, an approach that provides maximum flexibility in allowing customers to deposit a broad range of instruments to collateralize index options escrow receipts. It is hoped that this will avoid current inhibitions on the use of index options for hedging purposes and thereby give the industry experience with the use of broad-based index option escrow receipts.

The Commission is satisfied that the measures established by the exchanges, in cooperation with the OCC, adequately address its concerns about the proposals during the pilot period. The practical experience gained during the pilot period will permit the Commission, exchanges, OCC and industry to assess what further refinements are appropriate to assure the adequacy of the collateral deposited with the bank or trust company issuing the receipt. The expanded use of index

[19] In particular, data will be collected on the number of contracts covered by the receipts, the number of such contracts which were assigned an exercise, the number and type of customers using the receipts and the maximum amount of outstanding receipts obtained by any one customer. In addition, once a month certain additional information will be collected including the type of collateral underlying each receipt then on deposit, the value of the stocks collateralizing each receipt on deposit and the percentage, in terms of dollar value, that is represented by each stock, cash and/or cash equivalent comprising the collateral for each receipt on deposit. *See* letter from Margaret Wiermanski, Supervisor, Department of Financial Compliance, CBOE, to Brandon Becker, Assistant Director, Division of Market Regulation, SEC, dated June 21, 1985, and letter from Brandon Becker to Margaret Wiermanski, dated July 19, 1985.

[20] Under the exchanges' rules, such escrow receipts must be submitted to the member organization in a form satisfactory to the exchange. Because the Commission only has reviewed the terms of the proposed escrow receipt submitted by the OCC (in its related filing being approved by the Commission in conjunction with the exchange proposals, *see* note [16], *supra*) which imposes an obligation on the banks to monitor the collateral to assure its value does not fall below these 55% and 50% levels and to notify the appropriate parties if it does, Commission approval of the exchange proposals only would permit the use of an escrow receipt containing terms and conditions substantively identical to those of the OCC escrow receipt. The Committee understands that the exchanges in promulgating their rules, as well as in circulars to their members advising them of the pilot program, will so indicate. *See, e.g.*, letter from Mary L. Bender, Assistant Vice President, CBOE, to Brandon Becker, Assistant Director, Division of Market Regulation, SEC, dated August 1, 1985. Any exchange seeking to use a substantively different form of escrow receipt thus would have to seek Commission authorization pursuant to section 19(b) of the Act.

[21] We note that if the value of the collateral underlying the escrow receipt falls below 50% of the current index value, the OCC and the member organization would disregard the escrow receipt and request that margin be deposited for the short position that previously had been covered. The exchanges have indicated that they will issue circulars to their member firms stating that, when they are notified by a bank that the value of the collateral has fallen below 50% of the current aggregate position value the escrow receipt will cease to be acceptable to the member firm in lieu of margin unless the member firm promptly obtains additional collateral.

[22] *See* Federal Reserve Board, Commodity Futures Trading Commission, SEC, A Study of the Effects on the Economy of Trading in Futures and Options, Appendix IV–B (December 1984). The Commission specifically notes that it is only addressing the question of whether deeming such collateralized escrow receipts as "cover" would adequately address the financial integrity concerns under the federal securities laws. Thus, although OCC will require that the issuers of such receipts obtain representations from the purchasers of the receipts that the receipts will be used to "cover" a broad-based portfolio of securities, the Commission takes no position on whether the revised escrow receipts permitted under the exchange rules would be deemed to meet the definition of cover for purposes of the various relevant state or federal laws or regulations or for relevant corporate or trust documents.

option escrow receipts as the result of the pilot will also allow issuing banks to better assess whether it is worthwhile for them to modify their systems or fee structures specifically to accommodate such receipts. In the Commission's view, if carefully monitored, the use of cash, cash equivalents or one more qualified securities to collateralize broad-based index option escrow receipts under the pilot, should not jeopardize the financial integrity of the securities industry, the options markets or the banks and trust companies acting as issuers during the pilot.

V. Conclusion

Pursuant to section 19(b)(2) of the Act, the Commission must approve the foregoing rule changes if it determines that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission has reviewed carefully these proposals to permit the use of escrow receipts collateralized by cash, cash equivalents or one or more qualified securities to cover short call board-based index options positions for a pilot one year period and has concluded that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder, and in particular, the requirements of section 6. Based on the above discussion, the Commission believes the pilot program, as proposed by the options exchanges, provides sufficient investor protection while facilitating transactions in broad-based index options.

The Commission also finds that the poriton of Phlx's proposed rule change pertaining to escrow receipts for short put positions on broad-based index options and individual stocks options is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and, in particular, the requirements of Section 6.

Further, the Commission finds good cause for accelerating approval of the NYSE and PSE proposals and certain portions of the Phlx proposal prior to the thirtieth day after the date of publication of notice of filing in that these filings are indentical to those submitted by the CBOE and Amex which were noticed and published for a full 21 day comment period. We also note that no member of the public submitted a comment on the rule proposals of the other exchanges. Under the circumstances, any delay in permitting the NYSE, PSE and Phlx to particpate in the pilot program involving escrow receipts for short call broad-based index option positions would not be justified. In addition, the Commission finds good cause for accelerating approval of the portion of Phlx's proposal on escrow receipts for short put positions on broad-based index options and individual stock options because similar rules are already in existence on the other options exchanges. We note that no comments were received when the other exchanges proposed these changes to their rules.[23]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes, be, and hereby, are approved.

By the commission.

Dated: August 13, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19759 Filed 8-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22328; File No. SR-MSTC-85-4]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Co. Relating To Amendments to Its By-Laws To Allow Staggered Terms for Members of the Board of Directors

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 25, 1985 the Midwest Securities Trust Company 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

Attached to the filing as Exhibit A is the text of proposed amendments to MSTC's By-Laws allowing for staggered terms for members of the Board of Directors.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendments will allow MSTC to stagger its Board of Directors into three classes. As a result, MSTC will be able to elect directors for three year terms, divided into three classes. Currently all members of the Board of Directors are elected annually. This change in directors' terms is made possible by recent amendments to the Illinois Business Corporation Act (the "Act"), under which MSTC is incorporated. The additional amendments are of a technical nature and reflect other amendments to the Act. The approval of these amendments is requested to conform MSTC's By-Laws to the amended Act and to allow greater flexibility in managing MSTC's affairs.

The proposed amendments are consistent with Section 17A of the Securities Exchange Act of 1934 in that it provides for the fair representation of MSTC's Participants in the selection of its directors and the administration of its affairs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

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[23] Interested persons will still be able to submit written data, views and arguments concerning the NYSE's and PSE's submissions within 21 days from the date of publication of this release in the Federal Register and can continue to submit comments on Phlx's proposal during its existing 21 day comment period. Persons desiring to make written comments should file six copies thereof wtih the Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Reference should be made to File Nos. SR-NYSE-84-35, SR-PSE-85-19 and SR-Phlx-85-18. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and any subsequent amendments also will be available at the NYSE, PSE and Phlx.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 9, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 13, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19760 Filed 8-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22324; File No. SR-OCC-85-7]

Self-Regulatory Organizations; the Options Clearing Corp., Order Approving a Proposed Rule Change

The Options Clearing Corporation ("OCC") on May 29, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposal to solicit public comment on June 21, 1985 (50 FR 25811). No comments were received. This Order approves the proposal.

OCC's proposal would establish a pilot program permitting Clearing Members to deposit escrow receipts with OCC in lieu of OCC margin on short index call option positions carried for customer accounts.[1] OCC currently does not accept escrow receipts for index option margin and believes that this has discouraged broad institutional participation in the index option markets.

I. Description.

OCC's proposal would amend OCC Rule 1801, which currently prohibits Clearing Members from depositing escrow receipts for index option margin. Under amended Rule 1801, escrow receipts could be deposited only for short index call option positions.[2] The escrow receipt would be issued by a bank or trust company approved by OCC (the "issuing bank" or "bank") holding an escrow deposit for the account of a clearing Member's customer. Escrow deposits may consist of any combination of cash, cash equivalents,[3] and one or more common stocks listed on a national securities exchange or included in the current List of Over-The-Counter ("OTC") Margin Stocks published by the FRB.[4]

Under the terms of the escrow receipt to be used by OCC, the customer on whose behalf a Clearing Member makes a deposit authorizes the liquidation of the deposit to the extent necessary to preform the issuing bank's obligations to OCC. Those obligatios arise when OCC certifies to the bank that an exercise notice for a specified number of index call option contracts of the series covered by the escrow receipt has been assigned to the customer's account of the Clearing Member that deposited the escrow receipt. The bank's obligations are to pay to OCC, out of deposited property or its proceeds, an amount of cash equal to the product of (a) the number of contracts assigned [5] and (b) the exercise settlement amount [6] plus all applicable commissions and other charges. All deposited property not paid to OCC under these provisions must remain in the custody of the bank until released by OCC.

Amended OCC Rule 1801 would protect OCC against the decline in value of deposited property. If the total market value [7] of deposited property falls under 50 percent of the product of (a) the number of option contracts covered by the deposit and (b) the aggregate current index value of the underlying index, then OCC may disregard the escrow receipt and require margin to be deposited to cover the short positions previously covered by the escrow receipt.

OCC's proposal also would make a conforming amendment to OCC Rule 610 to exempt from OCC's margin requirements short index call positions covered by escrow deposits. Other provisions of OCC Rule 610, which governs generally the deposit of underlying securities for margin purposes, would apply to index option escrow receipts.[8]

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[1] OCC's proposal coincides with several similar exchange proposals approved by the Commission concurrently with this proposal. *See* Securities Exchange Act Release No. 22323 (August 13, 1985) aproving File Nos. SR-Amex-84-33; SR-CBOE-84-28; SR-NYSE-84-35; and SR-Phlx-85-18 ("Exchange Order").

[2] OCC notes that, while escrow deposits theoretically could be accepted for short put option positions, there appears to be no significant demand for that at present. Also, OCC's processing system currently is not programmed to accept escrow receipt deposits for puts.

[3] Cash equivalents are financial instruments meeting the requirements of § 220.8(a)(3)(ii) of Regulation T of the Board of Governors of the Federal Reserve System ("FRB") (12 CFR 220.8(a)(3)(ii)).

[4] Although the deposit itself need not include any stocks, under the form or escrow receipt to be used by OCC the bank would be required to maintain a written affirmation from the customer that the customer was writing options against a diversified stock portfolio.

[5] Up to the number of contracts covered by the escow receipt.

[6] The "exercise settlement amount" is the difference between the aggregate exercise price and the aggregate current index value. *See* OCC Rule 1801 and Article XVII, OCC's By-Laws.

[7] In calculating the value of deposited property, cash equivalents and common stocks shall be valued at their closing sale prices (if subject to last sale reporting) or closing bid prices (if not subject to lest sale reporting) on the day value is calculated. However, no value will be attributed to cash equivalents that do not meet the FRB's Regulation T requirements or to common stocks that are no longer listed on a national securities exchange or included in the FRB's current List of OTC Margin Stocks.

Clearing Members' customers would be permitted to substitute qualified property for property previously included in an escrow deposit if the current market value of the substituted property is at least as great as the property replaced.

[8] For example, deposits must be made in accordance with applicable law and must be

Continued

OCC's form of escrow receipt sets qualifications for banks issuing index option escrow receipts and establishes certain obligations of banks to provide additional safeguards to OCC. Issuing banks must be banks or trust companies regulated by state or federal authorities and must have capital stock of at least $20,000,000. The banks must maintain custody of deposited property either by holding specific certificates or by segregating part of a fungible bulk of securities on the books of a "financial intermediary" under the Delaware Uniform Commercial Code. The banks must certify that deposited securities are in good deliverable form or that the bank has unrestricted power to put them in good deliverable form. Banks also must certify that deposited property is qualified under amended OCC Rule 1801 and is of sufficient market value. In that regard, each issuing bank must provide OCC on request a current list of the contents of the deposit and must notify its customer and request that the customer supplement the deposit if its total market value is less than 55 percent of the current options position value. The bank also must notify OCC if the total market value of the deposit falls to less than 50 percent of current position value (at which point, OCC, under OCC Rule 1801, will disregard the escrow receipt and require OCC margin on the now substantially uncovered short positions). Finally, the depository may not subject (or permit the customer to subject) deposited property to any lien and must notify OCC promptly of any attempt to subject the property to a lien.

II. OCC's Rationale

OCC believes that the proposal would foster broader institutional participation in the index options markets. In addition, OCC believes that the proposal's limits on use of index option escrow receipts provide adequate protection for OCC and OCC's Clearing Members in the event of a default by a Clearing Member or its customer. OCC therefore believes that the proposal is consistent with the Act in general, and in particular with section 17A of the Act.

III. Discussion

For the following reasons, the Commission agrees with OCC that the proposal is consistent with the Act and should be approved. As more fully discussed in the Exchange Order,[9] the Commission agrees with OCC that the proposed pilot should remove an impediment to institutional participation in the index options market. The exchange and OCC proposals, taken together, allow OCC Clearing Members to accept and deposit with OCC, in lieu of OCC margin, escrow receipts received from customers (in lieu of customer margin).

The Commission believes that any program substituting for OCC's proven margin requirements must be structured carefully to protect OCC's financial integrity in the event of a default by an OCC Clearing Member or its customer. In light of the safeguards incorporated into the proposed form of escrow receipts, and the extensive monitoring efforts that will be undertaken during the pilot period, the Commission is satisfied that OCC's pilot is consistent with OCC's statutory duties to safeguard funds and securities in its custody or control or for which it is responsible.

The Commission notes that the initial value of escrow property will be many times greater than the margin OCC would have collected under OCC Rule 601, [10] and that banks must continuously monitor the value of deposited property. While OCC need only be notified if the value of deposited property falls to 50% of its original value, the Commission agrees with OCC that the market value of property initially required is large enough to protect OCC against most market movements with respect to deposited property or the index in question. Moreover, upon such notification, OCC may demand additional margin.

As more fully described in the Exchange Order, the exchanges will conduct an extensive program to monitor the use of escrow receipts and the market value of deposited property.[11] The exchanges will keep OCC fully informed of collected information on a timely basis and will notify OCC promptly of any adverse information concerning the escrow receipt program. The Commission is satisfied that these monitoring efforts should give adequate warning to OCC of any developing problems in the escrow receipt program, especially problems related to banks' obligations to monitor the value of deposited property. Nevertheless, the Commission expects OCC to take whatever steps it determines are necessary to maintain its financial integrity, including exercising its right under the terms of the proposed escrow receipt to receive accounts of the current market value of all deposited property at any time from each bank.

IV. Conclusion

In conclusion, the Commission believes that OCC's pilot escrow receipt program should encourage broader institutional participation in the index options market. Furthermore, the Commission believes that OCC's proposed rule change and form of escrow receipt, together with the proposed exchange monitoring program, are carefully designed to provide adequate safeguards to protect OCC from financial loss due to default of a Clearing Member or its customer.

On the basis of the foregoing, the Commission finds OCC's proposed rule change consistent with the Act and, in particular, with section 17A of the Act.

Accordingly, it is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule change (SR-OCC-85-7) be, and it hereby is, approved.

By the Commission.

Dated: August 13, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19761 Filed 8-16-85; 8:45 am]

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[Release No. 34-22316; File No. SR-OCC-85-8]

Self-Regulatory Organizations; Options Clearing Corp.; Order Approving Proposed Rule Change

On May 29, 1985, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). Notice of the proposal was published in the **Federal Register** on July 8, 1985.[1] The Commission received no public comment on the proposal. This Order approves the proposal.

OCC's proposal amends Article VI, section 7 of OCC's By-Laws and section 7 of OCC's Restated Participant Exchange Agreement ("PEA"). The proposal clarifies the responsibility for

delivered to OCC or withdrawn from OCC in accordance with specified timeframes.

[9] *See* note 1, supra.

[10] OCC Rule 601 requires margin essentially equal to the in-the-money value of the Clearing Member's short option position, plus certain minimum amounts. Under the escrow receipt program, the bank would hold property of value initially at least as great as the initial index option position value.

[11] The Commission understands that some escrow receipts may not be deposited with OCC. During the pilot, however, the exchanges will collect data on all index option escrow receipts (whether or not deposited with OCC). Establishing the exchanges as the focal point for monitoring purposes in these circumstances therefore appears to be an efficient allocation of resources. Nevertheless, the Commission understands that OCC and the exchanges will coordinate their activities and will share data promptly.

[1] 50 FR 27881.

losses resulting from a Participant Exchange's untimely submission of a matched trade report to OCC.

Under OCC's current By-Laws, OCC is not obligated on any Exchange transaction until it accepts the transaction [2] and such acceptance is subject to OCC's prior receipt of a matched trade report reflecting the transaction.[3] OCC's proposal will amend Article VI, section 7 of its By-Laws to clarify that OCC's obligation to accept an Exchange transaction is subject to receipt a matched trade report before such time as OCC specifies.[4] Additionally, the proposal will provide that OCC will not be obligated to any option purchaser or writer for losses resulting from an Exchange's untimely filing of a matched trade report or from any error in a matched trade report as filed.

OCC's proposal also will amend section 7 of the PEA. This section currently provides that a Participant Exchange's obligation to indemnify OCC for losses resulting from untimely reports does not apply to a delay caused by a Clearing Member in the filing of trade information with the Exchange. Under OCC's proposal, this provision will be deleted.

OCC believes that the proposed rule change is necessary because a Participating Exchange's failure to submit a timely matched trade report to OCC could expose Clearing Members to financial loss. If OCC delays its nightly processing to accommodate receipt of an untimely report, OCC might be unable to deliver its own reports to Clearing Members, including assignment notices, until after the opening of trading on the day after trade date. In this situation, Clearing Members carrying cash-settled options could incur losses.[5] Alternatively, if OCC proceeds with its nightly processing before receiving the untimely report, exercise notices for long positions opened on the previous day would be rejected by OCC because those positions would not yet appear on OCC's books. When OCC subsequently processes the untimely report, holders' long positions, instead of being exercised, would remain open and, consequently, would be subject to market risk.[6] Conversely, because OCC would have no record of closing purchases, exercise notices might be assigned to short positions that the writers had attempted to close. Thus, when the late report is processed, the closing purchases would be converted to opening purchases which entail market risk.

OCC believes that the proposed rule change is consistent with section 17A of the Act in that it promotes the safeguarding of securities and funds in OCC's custody or for which OCC is responsible. OCC believes that the proposal will protect OCC against potential financial exposure from events over which OCC has no control.

For the following reasons, the Commission agrees with OCC that the proposal is consistent with the Act and, in particular, section 17A of the Act and should be approved. The Commission agrees with OCC that it is inequitable to expose OCC and OCC Clearing Members to financial loss as a result of a Participating Exchange's failure to submit timely matched trade reports to OCC or a result of an error in a matched trade report. The Commission therefore agrees with OCC that it is appropriate for OCC to limit this exposure by clarifying the responsibility for losses resulting from a Participant Exchange's untimely submission of a matched trade report.

In addition, the Commission believes it appropriate for OCC to reduce the chances of delayed nightly processing or timely nightly processing of incomplete trade data that frustrates Clearing Member expectations. The proposal should help to ensure that OCC can deliver its own reports to Clearing Members based on complete matched trade data before opening of trading on the day after trade date, thus eliminating Clearing Members' exposure to the types of risks discussed above. The Commission therefore agrees with OCC that the proposal should assure the safeguarding of securities and funds in OCC's custody or control or for which it is responsible. Moreover, the Commission believes that the proposal should promote the prompt and accurate clearance and settlement of options transactions.

It is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule change (SR–OCC–85–8) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19762 Filed 8–16–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22318; File No. SR-PSE-85-21]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Addition of New Rules Designed to Regulate the Accessibility of Floor Facilities to Non-Registered Persons and Visitors

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(L)(1), notice is hereby given that on August 2, 1985, the Pacific Stock Exchange, Inc., filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rules to further define and limit the accessibility of PSE floor facilities to only duly authorized and registered visitors and persons is designed to prevent unauthorized persons from making trades or improperly influencing the market. Those rules make the member or member organization responsible for the actions of the non-registered person so that any action by that unauthorized person can be held against the member.

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

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[2] OCC By-Law Article VI, section 5.

[3] OCC By-Law Article VI, section 7.

[4] The PEA provides that each Exchange must submit to OCC a daily report of matched trades prior to such time as OCC may prescribe, which will not be earlier than 7:00 p.m. Central time on trade date. OCC requires Participant Exchanges to submit those reports to OCC by 1:00 a.m. Central time the day after trade date.

[5] For example, when the short leg of an index option spread is assigned, the assigned Clearing Member is exposed to market risk on the long leg until that leg is closed out or until the short leg is re-opened. If that Clearing Member is not notified of the assignment until after the opening of trading on the next day, it could sustain a loss on the long leg if the market moves adversely between the opening and the time when the Clearing Member learns of the assignment.

[6] That risk would be substantial to holders of options on equity securities that were the subject of a tender offer when the previous day was the expiration date of that offer.

most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rules were designed to enhance the ability of the PSE to adequately monitor and protect the general trading public by allowing it ot adequately insure that the PSE trading facilities will only be utilized by registered and approved persons. They will fit in with already existing rules regulating the use of floor facilities to members and properly authorized personnel. In this manner they comply with the requirements of sections 6 and 11A of the Securities Exchange Act of 1934.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement 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 the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved 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, at 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 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 September 9, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 12, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19763 Filed 8-16-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IX—San Diego Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Diego, will hold a public meeting at 9:00 a.m., on September 5, 1985, in the Federal Building, 880 Front Street, San Diego, California 92188, Room 4-S-29, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For futher information, write or call George P. Chandler, Jr., District Director, U.S. Small Business Adminstration, 880 Front Street, Room 4-S-29, San Diego, California 92188, (619) 293-5430.

Dated: August 12, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85-19686 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

Region IX—Honolulu Advisory Council; Public Meeting

The U.S Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, Hawaii, will hold a public meeting at 9:00 a.m., on Wednesday, September 18, 1985, in the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 7325 (7th Floor), Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call David K. Nakagawa, District Director, U.S. Small Business Adminstration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850, (808) 546-8950.

Dated: August 12, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85-19684 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

Las Vegas District Advisory Council; Public Meeting

The Small Business Administration, Las Vegas District Advisory Council will hold a public meeting on September 17, 1985, at the Small Business Administration Office, located at 301 East Stewart Avenue, Downtown Station, Post Office, 3rd Floor, Las Vegas, Nevada, from 10:00 a.m. to 12:00 noon, to discuss such matters as may be presented by Council members, staff of the Small Business Administration, or others present.

For further information, write or call Elizabeth Sutton, Secretary for Advisory Council, U.S. Small Business Administration, 301 East Stewart, Post Office Box 7527, Las Vegas, Nevada 89125, or call (702) 388-6611.

Dated: August 9, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85-19685 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

Concord District Advisory Council; Public Meeting

The Small Business Administration, Concord District Advisory Council will hold a public meeting at 10:00 A.M., Thursday, September 5, 1985, in the Concord National Bank Board Room, Concord National Bank, 42 N. Main and Warren Streets, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call William Phillips, U.S. Small Business Administration, 55 Pleasant Street, Concord, New Hampshire 03301, (603) 224-4041.

Dated: August 7, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85-19683 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-0177]

Erie Small Business Investment Co.; Issuance of a Small Business Investment Company License

On May 30, 1985, a notice was published in the **Federal Register** (50 FR 23097) stating that an application has been filed by Erie Small Business Investment Company with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)) for a license as a small business investment company.

Interested parties were given until close of business June 30, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03-0177 on July 19, 1985, to Erie Small Business Investment Company to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 12, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-19678 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0452]

NPD Capital, Inc.; License Surrender

Notice is hereby given that NPD Capital, Inc., 375 Park Avenue, New York, New York 10152, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). NPD Capital, Inc. was licensed by the Small Business Administration on March 21, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on July 31, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 12, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-19679 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5303]

Princeton Finance Co.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102(1985)) by Princeton Finance Company, 1605 W. Olympic Boulevard, Suite 972, Los Angeles, California 90015 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
Albert J. Robilotta, 554 8th Street, Hermosa Beach, CA 90254.	General Manager	0
Anthony Lee Sinskey, 1229 Grandview Drive, Glendale, CA.	Director, President.	90
Shanny Lee Sinskey, 1229 Grandview Drive, Glendale, CA 91202.	Chief Financial Officer, Secretary.	10
Chul-Ho Kim, 2740 Kennington Drive, Glendale, CA 91206.	Director	0
Cho-Kyun Riha Sinskey, 285 Commonwealth Avenue, Boston, MA 02115.	Director	0

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of California. As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy for facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Los Angeles, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 8, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-19680 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5364]

United Finance and Investment Co.; Application for License to Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)) under the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et. seq.*) and the Rules and Regulations promulgated thereunder.

Applicant: United Finance and Investment Company.

Address: 327 W. Main Street, Alhambra, California 91801.

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Position	Percentage of shares
Peter Lee Tri, 327 W. Main Street, Alhambra, California 94801.	Chairman of the Board.	20
Tran Qui Than, 1050 Overlook Road, Berkley, California 94708.	President/Director	5
Louis Dang, 573 O'Farrell Street, San Francisco, California 94102.	Secretary/Treasurer/Director.	2.5

The Applicant will begin operatings with $1,000,000 in private capital, and will be a source of equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of California.

As a small business investment company under Section 301(d) of the

Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Alhambra, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 8, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 19681 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01

[Declaration of Disaster Loan Area No. 2196]

Declaration of Economic Injury Disaster Loan Area; Wyoming

As a result of the President's major disaster declaration on August 7, 1985, I find that Laramie County constitutes a disaster loan area because of damage resulting from severe storms, hail, and flooding beginning on August 1, 1985. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on October 7, 1985, and for economic injury until May 7, 1986, at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825; or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (Non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 219606 for physical damage and for economic injury the number is 631800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 8, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-19682 Filed 8-16-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-85-21]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 29, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No.———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 13, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24346-1	Aeromar	14 CFR 91.303	To allow petitioner to operate four Stage 1 DC-8'54F aircraft until hushkits are installed.
24740	ANDES	14 CFR 91.303	To allow petitioner to operate one Stage 1 DC-8-55 aircraft until hushkits are installed.

[FR Doc. 85-19694 Filed 8-16-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 12, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New
Title: Survey of Tax Practitioners

OMB Number: 1545-0227
Form Number: IRS Form 6251
Type of Review: Revision
Title: Alternative Minimum Tax Computation

OMB Number: 1545-0034
Form Number: IRS Forms 942 and 942PR
Type of Review: Extension
Title: Employer's Quarterly Tax Return for Household Employees Planilla Para la Declaracion Trimestral Del Patrono de Empleados Domesticos—la Contribucion FICS (P.R.)

OMB Number: 1545-0086
Form Number: IRS Form 1040C
Type of Review: Revision
Title: U.S. and Departing Alien Income Tax Return

OMB Number: 1545-0153
Form Number: IRS Form 3206
Type of Review: Revision
Title: Information Statement by United Kingdom Withholding Agents Paying Dividends from United States Corporations to Residents of the U.S. Certain Treaty Countries

OMB Number: 1545-0072
Form Number: IRS Form 2119
Type of Review: Revision
Title: Sale or Exchange of Principal Residence

OMB Number: 1545-0089
Form Number: IRS Form 1040NR
Type of Review: Revision
Title: U.S. Nonresident Alien Income Tax Return

Clearance Officer: Garrick Shear (202) 566-6150, Room 5171, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Bureau of the Public Debt

OMB Number: 1535-0005
Form Number: PD 3253
Type of Review: Extension
Title: Exchange Subscription for United States Savings Bonds of Series HH

Clearance Officer: Peter Laugesen (202) 376-4902, Bureau of the Public Debt, Room 445, 999 E. Street, NW., Washington, DC 20226

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 85-19765 Filed 8-16-85; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "300 Years of German Painting and Drawing" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the Wallraf-Richartz Museum of Cologne, and the Smithsonian Institution Traveling Exhibition Service (SITES) of Washington, DC. I also determine that the temporary exhibition or display of the listed exhibit objects at the Indianapolis Museum of Art beginning on or about September 10, 1985, to on or about November 3, 1985; the Sunrise Museum and Foundation in Charleston, West Virginia, beginning on or about November 23, 1985, to on or about January 5, 1986; the Chrysler Museum in Norfolk, Virginia, beginning on or about January 25, 1986, to on or about March 9, 1986; the Center for the Fine Arts in Miami, Florida, beginning on or about March 29, 1986, to on or about May 18, 1986; and the Santa Barbara Museum of Art in California, beginning on or about June 7, 1986, to on or about July 18, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: August 13, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 85-19805 Filed 8-16-85; 8:45 am]

BILLING CODE 8230-01

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

VETERANS ADMINISTRATION

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held in the Omar Bradley Conference Room, of Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, on September 12 and 13, 1985. Both meetings will begin at 9 a.m. and conclude at 4:30 p.m.

These meetings will be open to the public to the seating capacity of the room. Anyone having questions concerning the meetings may contact Mr. Edward Lord, Associate Director for Administration and Development, Readjustment Counseling Service, Veterans Administration Central Office, at phone number 202/389-5419.

Dated: August 13, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Office.

[FR Doc. 85-19722 Filed 8-16-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 160
Monday, August 19, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

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 1:15 p.m. on Wednesday, August 14, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution making funds available for the payment of insured deposits in State Bank of Herndon, Kansas, Herndon, Kansas, which had been closed by the State Bank Commissioner for the State of Kansas on Wednesday, August 14, 1985.

At that same meeting, the Board also considered a personnel matter.

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. Michael A. Mancusi, 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)(2), (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)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 14, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-19862 Filed 8-15-85; 3:32 pm]

BILLING CODE 6714-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday August 22, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R Coyne, Assistant to the Board (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 14, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19781 Filed 8-14-85; 4:45 pm]

BILLING CODE 6210-01-M

3

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

SUMMARY: Interested members of the public are advised that a meeting of the Board of Directors of the United States Synthetic Fuels Corporation will be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1) and section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close the meeting pursuant to Article II, section 4 of the Corporation's By-laws, section 116(f) of the said Act and Sections 4 and 5 of the said policy.

Open Session

I. Call to Order—Chairman's Opening Remarks
II. Board Minutes
III. Consideration of Appendices to the Comprehensive Strategy Report
IV. Review of Pre-Qualification Proposals in Eastern Coal Solicitation
V. Negotiation Update on letter of Intent Projects
VI. Consideration of Fourth General Solicitation Projects
VII. Resolution to Close Meeting

Closed Session

VIII. Consideration of Negotiation Strategies
IX. Personnel Evaluations

TIME AND DATE: 1:00 p.m., August 21, 1985.

PLACE: 2121 K Street, NW., Room 503, Washington, DC, 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Ms. Karen Hutchison, Director-Media Relations, at (202) 822-6455.

Dated: August 15, 1985.

United States Synthetic Fuels Corporation.

March Coleman,

Assistant General Counsel-Corporate and Litigation.

[FR Doc. 85-19851 Filed 8-15-85; 2:46 pm]

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federal register

Monday
August 19, 1985

Part II

Department of Transportation

Office of the Secretary

14 CFR Part 221

Filing, Posting and Publishing of Tariffs by Air Carriers, and Foreign Air Carriers; Advance Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 221

[Docket No. 43343; Notice 85-10]

Filing, Posting and Publishing of Tariffs by Air Carriers and Foreign Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Sections 403 and 1601 of the Federal Aviation Act of 1958, as amended (the Act), require all U.S. and foreign airlines providing scheduled international air service to or from the United States to file tariff documents with DOT specifying the prices, terms, and conditions of that service. Once approved by the respective government aviation authorities under the procedures set forth in bilateral aviation agreements and Federal statutes, the published tariffs are legally binding documents. In addition, under section 403 of the Act and Subpart N of Part 221 of our Regulations (14 CFR 221), each airline is required to post a copy of its proposed and currently effective tariffs at each of its sales locations.

The paper tariff system has remained virtually unchanged since its establishment in 1938. Currently, DOT's Tariffs Division receives more than 500 tariff pages per day, containing approximately 25,000 changes in passenger fares, cargo rates, rules and related tariff material. Airlines and their tariff agents already utilize advanced computer and telecommunications technologies to communicate with each other and to produce the paper documents. DOT is considering possible amendment of its regulations to allow U.S. air carriers, foreign air carriers, and their agents to file international tariffs electronically, and to make tariff information available to the public at each sales location in an electronic format. This would not, however, relieve the airlines of their obligation to furnish a printed copy of the contract to the shipper or passenger, on request.

This notice asks for comments from the industry and the public on the potential costs and benefits of conversion to a computerized tariff system, possible ways that industry and government could cooperate in developing an automated system, and the impact that automation may have on tariff filing and review procedures and the aviation industry.

DATES: Comments should be received by November 18, 1985.

ADDRESS: Comment should be sent to Docket Clerk, C-55, Docket 43343, Department of Transportation, Room 4107, 400 7th Street SW., Washington, D.C. 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:00 p.m., Monday through Friday. Persons wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comments. The docket clerk will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Desta McDowell or Tom Moore, Tariffs Division, Office of Aviation Operations, P-44, Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, (202) 472-5573.

SUPPLEMENTARY INFORMATION:

Background

When DOT inherited the Civil Aeronautics Board's (CAB) international aviation functions, it also inherited an avalanche of paper known as the international tariff filing system. As required by the Act and international aviation agreements, both U.S. and foreign airlines must file their international passenger fares, cargo rates, and related rules with DOT for approval prior to implementation. DOT is responsible for reviewing all proposed international fares, rates, and rules, determining whether they should be suspended or disapproved, certifying the accuracy of the tariffs, negotiating fares, rates, and rules with foreign governments, and maintaining the public tariff files.

All of this is now done manually, with an antiquated paper filing and review system that dates back to 1938. Although the major airlines and tariff filing agents have computerized their tariff data systems, DOT has not. As a result, airlines are often in the position of converting computerized fare and rate data back into printed form for the sole purpose of meeting the statutory filing requirements. The industry is now spending at least $5 million a year to produce, file, and distribute paper tariff documents. DOT is spending more than half a million dollars a year just to process the paper.

The tariff volume is enormous; there are more than one million currently effective international fares, rates, and rules on file at DOT, and the Office of Aviation Operations is reviewing new filings at the rate of more than 500 pages a day. Since 1980, the number of pages filed has increased at an average rate of four percent a year. That trend is likely to continue, as price competition continues to develop in international aviation markets. The more competitive the market, the more rapid the pace of tariff filings, as airlines jockey for market position.

In 1984, the CAB Tariffs Division handled almost 130,000 new tariff pages, reflecting fare, rate and rule changes by more than 100 U.S. and foreign airlines. At DOT in the first six months of 1985, the filing volume reached 76,000 pages—a 19 percent increase over the comparable period in 1984. The volume of international aviation tariffs is quickly approaching the point where manual tariff processing at DOT will be unmanageable without major staff increases.

The system has become expensive and unwieldy for the airlines as well, since they must print, file, and distribute a complete page of tariff data, printed on two sides, whenever a single item on a page is changed. Tariff publishers now charge an average preparation, printing, and handling fee of approximately $45.00 per side to product a tariff page. With the accelerated rate of filings in competitive markets, tariff production and distribution have become significant expense items for many airlines and a considerable administrative burden. Although DOT has adopted special expedited tariff procedures in an attempt to handle the enormous flow of filings as promptly as possible, the continuation of a paper tariff system imposes a substantial expense and an increasing regulatory burden on the aviation industry.

Handling massive data banks like this, with a constant, rapid flow of changes and revisions, is precisely what computers are designed to do. The CAB began looking at the feasibility of computerization before sunset, but was not in a position to take action. Since January 1985, however, DOT has been conducting preliminary staff work on the feasibility of automation, and investigating the system specifications, user needs, costs and potential benefits of conversion to a computerized tariff filing and review system.

Current Tariff Requirements and Procedures

The following description of present filing and review procedures makes it clear, we think, why DOT is considering computerization of the tariff system.

Faced with the sheer volume of international tariffs, the need to process the filings rapidly, the enormous cost and paperwork burden on the aviation industry, the time-consuming process of searching through paper tariffs to evaluate new filings and the unwieldy

manual record-keeping required to monitor tariff material, track filing fees, and maintain tariff files by hand, DOT is looking for ways to automate the system, cut costs for both the industry and the government, and reduce this regulatory burden.

There are now 145 currently effective tariffs on file with DOT; set up in the form of numbered loose-leaf binders, they contain approximately 20,000 pages of fares, rates, and rules. Individual tariffs range in size from a single airline document of only a few pages to a massive combined listing for numerous airlines that runs to 2,000 pages. The tariffs are organized into passenger and cargo volumes by publisher, world area, and airline.

In each of the pricing tariffs, specific fares and rates are listed by airline, city-pair market, fare/rate category, and direction, in U.S. dollars, foreign currencies, or currency-conversion units. Currency-conversion units, designated as FCUs (fares) or RCUs (cargo rates), reflect a system of indexing international fares and rates to adjust for currency exchange-rate fluctuations. Airlines may publish their prices in dollars and foreign currency, in dollars and FCUs/RCUs, or in all three forms. Each fare or rate listing also cites a rule number, referring to the accompanying rules tariffs which specify the terms and conditions under which the fare or rate shall be applied.

DOT maintains complete files of all effective and cancelled pages of current tariff volumes. Cancelled tariff volumes are kept on file at DOT for two years, then transferred to the Federal Records Center and stored for an additional three years as required by Federal regulations.

1. Filing Procedures

A few airlines file tariff material for themselves, but most use tariff agents to handle the filing process. Airlines transmit their instructions to their agents electronically or by mail; the agents have some discretionary authority to massage the data to comply with DOT technical specifications. Approximately 98 percent of all tariff filings are currently processed by agents, and two agents—Airline Tariff Publishers (ATP) and Official Airline Guides (OAG)—handle the majority of filings.

Airlines and tariff-filing agents currently present proposed fare, rate, and rule changes to DOT in three forms:

(a) Statutory tariff filings, submitted 30–75 days prior to the proposed effective date of the tariff material, as specified by the various governing bilateral aviation agreements and Part 221 of DOT's Economic Regulations;

(b) Special Tariff Permission Applications (STPs), filed to propose tariff revisions on less than statutory notice, pursuant to permissive provisions in the governing aviation agreements and Part 221; or

(c) Tariff material filed on short notice, pursuant to an approved STP.

At present, approximately 95 percent of all fare and fare rate changes are initially submitted as STP applications; DOT processes an average of 750 STPs each month. An STP application typically includes a full listing or description of the various fare, rate, or rule revisions the airline is proposing, but it does not in itself constitute a legal tariff. If the STP application is approved by DOT staff, the filing airline may implement that special short-notice permission by filing the necessary tariff pages within 15 days. Airlines or agents filing tariff pages pursuant to an approved STP often receive permission to put those tariffs into effect on as little as one day's notice, but must comply with any specific conditions set forth in the STP authorization.

General format requirements apply to both statutory filings and STPs. In addition, for filings that propose changes in fares or rates governed by specific standards established by agreements or statutory or regulatory requirements, certain types of additional tariff documentation are required, showing the percentage increases proposed relative to the regulatory fare or rate base levels and the allowable maximum levels. These comparison requirements may be waived in markets governed by liberal bilateral aviation agreements, and in cases where the airline is merely filing to match a direct competitor's prices or rules. When filing matching fares or rates, the airline need only cite the tariff page references, identifying the particular fares, rates, or rules being matched.

The technical format specifications for paper tariff filings are spelled out in Part 221 of DOT's Economic Regulations. The requirements for documentation in support of proposed tariffs are specified in section 1002 of the Act, Part 221, and various CAB and DOT orders and technical staff letters to the industry.

2. Fees

DOT filing fees are now assessed on a per-page basis, at the rate of $2 per side. There is no fee for pages reprinted without change—for example, the reverse side of a page filed with fare or rate revisions. The fee for STPs is a flat charge of $12 per filing. We also currently waive filing fees for all foreign carriers whose aviation authorities grant U.S. carriers a reciprocal waiver of fees; we do not anticipate any change in those reciprocal arrangements.

3. Tariff Evaluation Procedures

Both statutory filings and STP applications must be evaluated promptly. With respect to statutory filings, most U.S. aviation agreements set mandatory time limits; generally, if the U.S. Government wishes to prevent a proposed tariff change from taking effect, DOT must take action on the proposal by issuing a "notice of dissatisfaction" to the foreign government involved within 15 calendar days after receipt of the filing. To investigate and suspend a statutory tariff filing, DOT must then submit a formal "suspension order" to the President for review. The President has 10 calendar days to disapprove DOT's order on foreign policy grounds, as stipulated by section 801 of the Act. Under most U.S. aviation agreements, the entire process—evaluation of the proposed tariff, notice of dissatisfaction, suspension order, and Presidential review—must be completed within 30 calendar days after the original tariff filing. Failure to initiate the process with a timely notice of dissatisfaction is tantamount to U.S. Government approval of the proposed fares, rates, or rules.

For STP filings, rapid evaluation is a matter of aviation policy rather than a statutory requirement. DOT has encouraged the use of STP procedures in order to facilitate flexible, competitive airline responses to changing market conditions. Since delay in staff review of STP applications would obviously run counter to that policy objective, the applications are processed within 24 hours of receipt whenever possible.

Within these time limits, all filings are examined for compliance with statutory and technical requirements; 10 to 15 percent of the STP applications require further economic analysis, and all statutory filings involving major changes in rules or fares and rates subject to statutory or regulatory standards are forwarded to DOT's International Fares and Rates Division for economic evaluation.

Changes range from minor clerical corrections to filings in which an airline proposes to revise the entire structure of fares, rates, or rules it offers on its international routes.

Roughly 20 percent of all tariff filings involve (1) fares or rates governed by regulatory standards, (2) fares, rates, or rules proposed for a market or by an airline which DOT is monitoring for

various reasons, or (3) fares, rates, or rules which, by their own terms, raise policy questions, will have a major marketing impact, or are otherwise controversial. In those cases, the filing is subject to detailed economic review.

Preliminary Comments on the Operation of an Automated Tariff System

We are considering a system that would enable the airlines, or their agents, to transmit tariff changes electronically to a central data base, and to provide public access to tariff information through computer terminals at their sales locations. In addition to the industry's savings in printing and dissemination costs, we believe that an electronic system would speed up DOT's response time and enable airlines to react more quickly to changing market conditions.

1. Procedures

The electronic tariff system we envision would allow airlines or their agents to file fare, rate, and rule changes directly with a central data base via a telecommunications system. Authorized users would transmit data directly to the "proposed tariff" file of the electronic system. Security measures would be installed to prevent unauthorized users from accessing or manipulating data.

All three types of filings for fares, rates, and rules could be submitted electronically: Statutory tariff filings; special tariff permission applications (STPs); and tariffs filed pursuant to approved STPs. Rules tariffs, which are published in paragraph format, are more complex than fares and rates, but they could also be computerized, since they contain a fairly standard set of variables.

The system would incorporate each new filing into the data base, identifying the filing as approved, rejected, or pending, with appropriate proposed/approved/rejected/effective/expiry dates.

The computer would be programmed to add cancellation dates automatically whenever any element of a fare, rate, or rule is replaced by new, approved tariff material. The on-line system would be updated as each filing is processed to be completely current at all times.

With the development of computerized tariff filing procedures, the tariff-page system would become obsolete for most airlines. The relevant measure of volume, for example, would become the number of specific tariff entries changed per day or per month, rather than the number of pages filed. At present, a new page must be submitted whenever there is a change in any entry on the page; a single filing may involve 100 tariff pages or more, each of which may contain only one minor revision—for example, a single corrected routing code—or hundreds of substantive changes involving new markets, fare or rate categories, price levels, and rule numbers throughout an airline's system. In a recent sample, we found that each tariff page included an average of 50 revisions in specific data items: airline, market(s), fare or rate codes, U.S. dollar/FCU/foreign currency price levels, directional designators, rule numbers cited, routing codes, effective/expiry dates, or footnotes. By this estimate, the present rate of tariff filing—500 to 600 pages per day—is equivalent to a volume of 25,000 to 30,000 item revisions per day.

The use of computerized filing procedures would also make the tariff-page system obsolete as a means of identifying tariff transmissions. Each tariff entry changed would have to be tagged with a transaction identification code, in lieu of the present page-number identification system. The transaction code would provide the same information now shown on the tariff page: filing airline, publishing agent (if any), STP number (if any), filing date, effective date, expiry date (if any), and a numerically sequenced transaction number to identify the filing. A single transaction code could be used for all of the data entries filed in a single transmission, if all of the identifying elements noted above are the same for each data item in the transmission. A transmission involving tariff data for two or more airlines, STP numbers, or effective/expiry dates would require two or more transaction codes.

When an airline or agent transmits an entry to the "proposed tariff" file, the computer would perform a basic series of checks against reference data stored in the system, including routine comparisons to regulatory standards and maximum price levels. The system would also be updated daily to recognize and flag filings involving any special markets, airlines, or fare/rate/rule categories that require additional monitoring.

Comparisons would be displayed on the screen for the analyst's review, with printouts available as needed. Linking rules to fares and rates by means of the rule number, the system would allow the analyst to call up the supporting rule(s) when reviewing the fare or rate proposal. Upon completion of the review, the analyst would decide whether to accept, reject, or hold the filing for further evaluation, and would transmit a message to notify the airline or agent of the decision.

The analytical and checking procedures for both STPs and statutory filings are essentially identical. Once an STP has been approved, however, it would be held on-line in an "approved-unused" file until the implementing tariff material has been submitted. Upon receipt of the tariff material, the computer would check for compliance with the approved STP, enter the tariff material into the official effective tariff file, and annotate the STP with the date implemented before transferring it to storage. STPs that are not used or extended within 15 days would be automatically cancelled and stored in a separate file, as they are now under the manual tariff system.

Analysts would also need readily accessible reference data on mileages, certificate and permit authority, bilateral agreements, International Air Transport Association agreements, exchange rates, and service by market, to allow detailed market analysis when necessary. Optimally, all such reference data should be incorporated in a relational database by common data elements such as country, market, and airline, to enable analysts to perform a full range of on-line data comparisons.

A complete record of transactions would be created daily; major tariff proposals and staff actions would be summarized in a daily or weekly management report, and an automatic sequential log of all transactions, coded by transaction number, date, airline and market, would be stored off-line, with printouts produced as necessary. In addition, one or more terminals would be available at DOT for the public to use free of charge, so that current tariff information would continue to be accessible to anyone who desires to review it. We would charge a small fee for supplying printed documents, as we now charge for photocopies of printed tariff pages.

2. History

The on-line record would contain the present, immediately previous and proposed fares, rates, and rules. Historical records would also be necessary, however, to enable analysts to trace market developments, resolve international pricing questions, and evaluate current proposals.

On a day-to-day basis, analysts most frequently refer to records from the previous year to evaluate current tariff filings. Therefore, tariff records from the previous year must be readily available with minimal retrieval time. Older records would be needed for research and reference purposes, but less frequently. In addition to research

performed to evaluate current filings, resolve pricing disputes, and prepare economic analyses. DOT provides certified copies of tariff records for court cases. When researching tariff data, the critical question usually is, "What fare, rate, or rule was in effect for a specific airline in a specific market as of a specific date?" Any proposed system must allow users to retrieve any fare, rate, or rule in effect at any given time, and to produce printed copies of specific records.

The system should include annual historical tapes or disks, containing the record of all changes enacted during the year. History files of reference material in the system should also be maintained on a weekly, monthly, or annual basis, depending on the type of data.

Conversion to an automated tariff system would require some revisions in DOT regulations governing the retention of tariff files. During the transition period, the agency would maintain loose-leaf volumes of past tariff pages, as specified by current regulations. In practice, the present retention requirements, which specify that cancelled tariff volumes will be held for 5 years, result in the retention of records for much longer periods; if a tariff volume remains active for 7 years, for example, and is then held for the requisite 5 years as a cancelled volume, it will include data up to 12 years old. Once the data are fully automated, the agency is considering holding the historical computer tapes or disks for a minimum of 5 years.

3. Rules

Because passenger and cargo rules and conditions of service are published in the form of text, not tables, computerization of the rules tariffs would require some creativity. Most rules follow a standard format, listing advance-purchase periods, minimum/maximum-stay requirements, stopover conditions, weekend surcharges, refund provisions, and other travel or shipping requirements in a specific sequence of paragraphs. Each paragraph or subsection, however, may include a dozen or more variations on the rule's provisions, as individual airlines attempt to develop a market advantage by modifying the specified conditions of service.

Analysts must be able to retrieve the rules files not only by rule number and date, but by airline, country, and market. Because analysts frequently conduct comparative checks on proposed rules, the system should provide the capability to compare rules over time, rules for a given airline across markets, or rules for different airlines in a single market. In addition, analysts would need the capability to match fare or rate filings to the applicable rule in effect at a specific date; consequently, an index file must be created, listing each airline's fare codes, marketing names, and accompanying rule numbers at any given time.

The full text of each airline's rules must be available, of course, but it would also be necessary to develop an abbreviated rules file by coding the major rule components for quick access, comparison, and display. With an encoded rules file on-line, the analyst evaluating a proposed tariff rule change would be able to perform most of the necessary analytical checks with a minimum of file-search time. The full text of each rule would be stored in the system to be called up for display or printout as necessary. All entries—including changes in rule provisions—should be tagged with proposed, effective, and expiry dates.

4. Other Issues

At this preliminary stage, a number of questions remain unresolved. For example, any proposed format for computerized tariff transmissions would differ considerably from the standard page format now used in paper tariff filings. The format chosen should be (a) flexible enough to handle many different types of filings, (b) fully compatible with the industry's electronic-tariff capabilities, and (c) easily readable by DOT analysts and other system users.

In addition, the structure of DOT tariff filing fees would change. With the discontinuation of the tariff-page system, fees for tariff changes could be charged on the basis of computer and telecommunications system time-use, per data item or per transaction for fare and rate revisions, and per line or per transaction for the text of tariff rules. While the new fee structure has not yet been developed, by law the fees charged should cover the basic costs of processing the tariff material filed. It is our intention to ensure that an equitable fee structure is established that reflects actual costs and apportions those costs fairly among high- and low-volume users. Since airlines and agents now file hundreds of tariff pages to make only minor data changes, the switch to a computerized tariff system and revised fee structure should substantially reduce filing fees in many cases.

We are also considering the issue of whether electronic tariff filing procedures should be voluntary or mandatory, once an electronic system is in place. Most tariff publishing firms have already computerized their own operations, and should be able to make a transition to a computerized tariff system relatively easily. Not all airlines use filing agents, however, and some smaller airlines might find it expensive to acquire the necessary telecommunications facilities solely for tariff purposes. All airlines providing service to or from the United States must continue to file tariffs in one form or another, of course; but it is not our intention to impose an undue financial burden on any segment of the industry. Consequently, even if the majority of the industry were to convert to an electronic filing system, we anticipate a need to permit continued filing of paper tariff documents for any airlines which would experience financial hardship if compelled to use an electronic system.

Technical and Policy Issues

To ensure that a computerized aviation tariff system would fully meet the needs of the industry and the public, DOT is seeking public input at this preliminary stage. We are particularly interested in ascertaining the potential financial and technical impact on the aviation industry, and would welcome any analyses or comments that airlines, agents, or other interested parties may wish to provide. We also invite all interested parties to comment on the following issues:

1. What cost savings or expenses would airlines or agents experience in filing tariff changes electronically, compared to the present cost of filing paper tariffs?

2. What expenses would airlines or agents be likely to incur in developing electronic filing systems that will be consistent with DOT regulations?

3. Would computerization of tariff-filing procedures have a substantial effect on present contractual relationships between airlines and tariff filing agents?

4. What changes, if any, would be necessary in airlines' tariff-related concurrence and power-of-attorney documents?

5. What procedures should be established for the electronic filing of joint fares?

6. What additional data-security measures, if any, would be necessary to ensure that third parties cannot tamper with proposed, effective, or past tariff material?

7. What could be done to facilitate the computerization of tariff rules?

8. Tariffs are public documents. To what extent should direct terminal access to the central data base for purposes of reading proposed, effective, or past tariffs be provided for airlines, filing agents, travel agents, freight

forwarders, government agencies, and the general public?

9. What modifications, if any, would conversion to a computerized system require with respect to U.S. bilateral or multilateral aviation agreements, Federal statutes, of DOT regulations?

10. Have any other governments implemented an electronic tariff system? If so, how are the systems operating? What problems and benefits have been experienced?

11. Are there any feasible alternatives to the proposal discussed in this document?

12. In what ways could we best establish a cooperative effort between industry and government to develop an automated tariff system?

We are soliciting input from the public and the aviation industry at this time to ensure that DOT continues to meet the needs of the traveling and shipping public in terms of competitive air service, as well as specific fare, rate, and rule information, and to assure that the industry's capabilities are compatible with DOT's needs. Specifically, we request comments from the industry and the public on the potential cost and benefits of conversion to a computerized system, on the ways in which the industry could participate in the development of this system, and on the impact that automation may have on tariff filing procedures and the aviation industry.

We will give all comments careful consideration, to ensure that any automated system designed to handle international aviation tariffs will meet the needs of the industry, the public, and government aviation authorities.

Rulemaking Process Matters

This advance notice of proposed rulemaking discusses what, if further regulatory action is taken, would be a significant proposed or final rule under DOT's Regulatory Policies and Procedures. DOT would be obligated to prepare a regulatory evaluation for such a proposed or final rule. Based on information currently available, we have developed a preliminary economic analysis. A major purpose of this ANPRM is to request information that will enable us to make a complete evaluation.

Executive Order 12291 does not require DOT to obtain the approval of the Office of Management and Budget (OMB) for an advance notice of proposed rulemaking. However, any proposed or final rule resulting from the ANPRM wuld be subject to the Executive Order's OMB coordination requirements. At this time, we do not anticipate that a proposed or final rule resulting from this ANPRM would be a major rule under the Executive Order, but we will consider, based on the comments we receive, whether a subsequent rulemaking action should be regarded as major.

Preliminary Economic Analysis

This is a preliminary economic analysis based on our estimates of costs and benefits to the government and the industry. We would appreciate public comments on this analysis. We have also contracted with a private contractor to help develop more detailed economic data for use in further analysis of this issue.

More than one million currently effective international fares, rates, and rules are on file at DOT, with new tariff pages received at a rate of more than 500 per day. Our preliminary survey shows each page contains approximately 50 item changes, or 25,000 per day. During the first six months of 1985, page volume increased 19 percent over the same period in 1984—a trend that we expect to continue as competition develops in international markets. Without the conversion to an electronic system, DOT would have to add personnel in the future to process paper.

The Department now spends approximately half a million dollars a year to process the paper tariffs. The cost to industry is much greater. All major carriers file tariffs through two tariff-publishing agents. Tariffs publishers charge an average fee of $45 per side to prepare, print, and file a tariff page with DOT. Airlines must print, file, and distribute a complete page of tariff data, printed on both sides, whenever a single item is changed. Thus, changing a single fare in a single market costs an airline almost $100 in paperwork alone. Based on the 1984 volume of 130,000 pages, we estimate the cost to industry was $5.8 million.

A preliminary cost analysis conducted by our contractor indicates that development of the electronic tariff filing system will cost the government between $2.5 and $3 million over a 3–5 year period. The development costs should be recovered over time through user fees, which will replace the current per-page filing charge The airlines and publishing agents, which already utilize computer and telecommunications technology to communicate with each other, may experience short-term costs for technical adjustments to make their systems compatible with an automated tariff system.

We believe that the airlines will reap substantial long-term benefits through lower tariff-processing costs, faster and easier implementation of marketing strategies, and a new ability to respond to competitor's pricing initiatives, as well as a substantial reduction in paperwork.

Computerization of the tariff system should ultimately produce substantial taxpayer savings as well. Processing paper tariffs imposes an enormous regulatory burden on the industry, inhibits flexible marketing in today's environment of competitive pricing strategies, and represents an inefficient use of Federal resources, given the feasibility of automation at this point.

With automation, the cost of processing simple tariff changes should decline dramatically for both the government and the industry. At DOT, each approved tariff page is now handled a minimum of five times. The page is stamped with the date received, reviewed by a tariff examiner and in some cases by an industry analyst as well, stamped "official file", inserted into the proper current-tariff binder, later stamped with a cancellation mark, and then refiled in the appropriate cancelled-pages binder to be held for reference purposes. Computerization of this process would produce significant cost savings and efficiency gains, and lower long-term labor costs than would be necessary if the paper system is retained. For the industry, which must not only produce and file those pages with DOT, but also distribute copies to all sales locations, the savings should be even greater.

DOT requests comments on whether a proposed or final rule resulting from this ANPRM would have a significant economic effect on a substantial number of small entities.

We also request comments on the extent to which computerization of the DOT air tariff system would further the objectives of the Paperwork Reduction Act.

List of Subjects in 14 CFR Part 221

Air rates and fares, Explosives, Freight, Handicapped.

Issued this 10th day of August 1985, at Washington, D.C.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 85-19631 Filed 8-16-85; 8:45 am]

BILLING CODE 4910-62-M

federal register

Monday
August 19, 1985

Part III

Consumer Product Safety Commission

Approaches for Increasing Commission Support of Voluntary Standards; Public Hearings

CONSUMER PRODUCT SAFETY COMMISSION

Approaches for Increasing Commission Support of Voluntary Standards; Public Hearings

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearings.

SUMMARY: The Commission has always supported voluntary standards that effectively reduce risks of injury presented by consumer products. In recent years, however, the Commission has focused on possible ways to increased this support. To obtain the views of interested members of the public on this topic, the Commission has scheduled public hearings in Los Angeles and Washington, DC.[1] Oral comments (and written comments from those unable to attend) will be welcomed on ten possible approaches identified by the Commission and on any other alternative suggestions from the public.

DATES: The Los Angeles hearing will be on Friday, October 18, 1985, beginning at 9:30 a.m. Requests from members of the public who want to make presentations at this hearing must be received by October 11, and texts or summaries of presentations are due by October 15. The Washington, DC hearing will be on Wednesday, November 13, 1985, beginning at 9:30 a.m. Requests to participate must be received by November 6, and texts or summaries are due by November 8.

ADDRESS: The Los Angeles hearing will be at the Davidson Conference Center, University of Southern California, 3415 S. Figueroa Street, in the auditorium. The Washington, DC hearing will be at 1111 18th Street NW., in the third floor conference room.

FOR FURTHER INFORMATION CONTACT: For information about the subject of the hearings, contact Douglas Noble, Office of the Executive Director, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6550. To request the opportunity to make a presentation at one of the hearings, contact Sheldon Butts, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6800.

SUPPLEMENTARY INFORMATION:

A. Background

During its 12-year existence, the Consumer Product Safety Commission (CPSC) has supported voluntary standards that effectively reduce risks of injury presented by consumer products. Under existing regulations, the Commission participates in or monitors the development of voluntary standards. 16 CFR Part 1032—Commission Involvement in Voluntary Standards Activities. The regulations also address the Commission's role in the support of some voluntary standards that have been adopted and implemented, stating that the Commission may assist in disseminating information on them and may encourage their use by state and local governments. 16 CFR 1032.4(b).

The Commission has recently focused on ways to increase its support of effective voluntary standards. In June 1984 the Commission proposed an amendment to its regulations concerning possible "recognition" of such standards. 49 FR 25005 (June 19, 1984). In written and oral comments, 39 members of the public presented their views on the recognition proposal and on the general subject of Commission support for voluntary standards.

The proposed amendment on recognition was withdrawn in May 1985, but the Commission at that time noted its continuing strong support of effective voluntary standards and its intention to "consider alternatives designed to bolster that support." 50 FR 19700 (May 10, 1985). The Commission staff has prepared a briefing package discussing ten such alternatives, and, on May 8, 1985, orally briefed the Commission on them.

B. Staff Alternatives

Following are the Commission staff's ten possible alternatives for providing increased support of effective voluntary standards (the full briefing package which discusses them in detail, dated April 22, 1985, is available from the Commission's Office of the Secretary):

1. The Commission staff could be allowed to serve as voting members of voluntary standards development committees.

2. The Commission could publish, in a letter or through other means, a statement in support of a voluntary standard when it is decided that the standard satisfactorily addresses a safety hazard of particular concern to CPSC.

3. The Commission could recognize the improvement in the safety of *products*, not the voluntary standards with which they are certified to be in compliance.

4. Voluntary standards could be supported through Commission outreach activities, including CPSC publications, information and educational campaigns, and conferences.

5. Voluntary standards could be deferred to on a case-by-case basis, through procedures set forth in section 9 of the Consumer Product Safety Act, 15 U.S.C. 2058.

6. A pilot program could be established to provide support for a specific voluntary standard.

7. The Commission could enter into a formal agreement with a voluntary standards organization, through a memorandum of understanding (MOU), supporting selected voluntary standards activities.

8. CPSC staff could be more active in supporting voluntary standards in various ways, e.g., increased attendance at voluntary standards meetings, improved communications with industry, etc.

9. The Commission staff could enhance the programs of a voluntary standards project by meeting, individually, with manufacturers of the product involved at the beginning of the standards development process.

10. The Commission could issue a statement of policy that encourages State and local governments to consider voluntary standards as an alternative to regulations that these governments are developing.

For more information about these alternatives—such as a copy of the April 22, 1985 briefing package that discusses them—or about the general subject of CPSC support for effective voluntary standards, members of the public may contact Mr. Douglas Noble at the address and telephone number provided above. Mr. Noble is the Commission's Voluntary Standards Coordinator.

C. Hearings

Both hearings will begin at 9:30 a.m. and conclude the same day. The Los Angeles hearing will take place on Friday, October 18, 1985 at the Davidson Conference Center, University of Southern California, 3415 S. Figueroa Street, in the auditorium. The Washington, DC hearing will take place on Wednesday, November 13, 1985 at 1111 18th Street NW, in the third floor conference room.

The purpose of the hearings is for the Commission to receive comments on possible ways to increase its support of effective voluntary standards. Comments are welcome on the ten alternatives listed in section B above. In addition, comments and suggestions are particularly welcome on other alternative ways for the Commission to achieve the same result.

Every member of the public is welcome to make a presentation at one of the hearings, regardless of whether he

[1] The Commission approved the hearings by a vote of 3-0-1, with Commissioner Statler abstaining.

or she previously submitted written comments or presented oral comments on the June 1984 proposed amendment. The Commission is interested in the viewpoints of consumers, consumer organizations, industry members, trade associations, standards setting organizations, state and local governments, and any other interested parties. Presentations should be limited to approximately ten minutes, but the Commission reserves the right to impose further restrictions to avoid duplication or conserve time. If the length of any presentation is severely curtailed, the previously-submitted written text or summary will be entered into the official record.

Anyone interested in making a presentation at the Los Angeles hearing should contact Mr. Sheldon Butts (address and telephone number provided above) no later than October 11, 1985, and provide him with a written text or a summary of the presentation by October 15, 1985. For the Washington, DC hearing, Mr. Butts should be contacted by November 6, 1985, and receive a written text or summary by November 8, 1985.

Anyone who is interested in providing comments but is unable to attend either hearing may submit written comments to the Office of the Secretary, CPSC, Washington, DC 20207 no later than November 13, 1985.

Authority: Section 27(a) of the Consumer Product Safety Act; 15 U.S.C. 2076(a).

Dated: August 13, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-19661 Filed 8-16-85; 8:45 am]

BILLING CODE 6355-01-M

federal register

Monday
August 19, 1985

Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee Meeting; Notice

Recombinant DNA Molecules Research, Proposed Actions Under Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20205, on September 23, 1985, from 9:00 a.m. to adjournment at approximately 5:00 p.m. This meeting will be open to the public to discuss:

Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols;
Containment for cloning of toxin genes;
Exchange list for gram positive bacteria;
Amendment of Guidelines; and
Other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at the meeting may be given such opportunity at the discretion of the chair.

Dr. William J. Gartland, Jr., Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, Building 31, Room 3B10, telephone (301) 496–6051, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

Dated: August 13, 1985.

Thomas E. Malone

Deputy Director, NIH.

[OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.]

[FR Doc. 85–19719 Filed 8–16–85; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Proposed Actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth proposed actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. After consideration of these proposals and comments by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on September 23, 1985, the Director of the National Institutes of Health will issue decisions on these proposals in accord with the Guidelines.

DATE: Comments must be received by September 18, 1985.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, Building 31, Room 3B10, National Institutes of Health, Bethesda, Maryland 20205. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m. Comments received by close of business September 16, 1985, will be reproduced and distributed to the RAC for consideration at its September 23, 1985, meeting.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from Drs. Stanley Barban and Elizabeth Milewski, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–6051.

SUPPLEMENTARY INFORMATION: The National Institutes of Health will consider the following actions under the Guidelines for Research Involving Recombinant DNA Molecules.

I. Request for Permission To Clone Shiga-like Toxin From the Families Enterobacteriaceae and Vibrionaceae in E. coli K–12

Dr. Alison O'Brien of the Uniformed Services University of the Health Sciences had previously (49 FR 36052) received permission from the National Institutes of Health to clone the structural gene of the Shiga-like toxin (SLT) of *Escherichia coli* in *E. coli* K–12. The specific language concerning the permission reads as follows in the current version of the NIH Guidelines (49 FR 46279):

"Appendix F–IV–H. The intact structural gene(s) of the Shiga-like toxin from *E. coli* may be cloned in *E. coli* K–12 under BL3 + EK1 containment conditions.

E. coli host-vector systems expressing the Shiga-like toxin gene may be moved from BL3 to BL2 containment conditions provided that: (1) The amount of toxin produced by the modified host-vector systems is no greater than that produced by the positive control strain 933 *E. coli* 0157H7, grown and measured under optimal conditions; and (2) the cloning vehicle is to be an EK1 vector preferably belonging to the class of poorly mobilizable plasmids such as pBR322, pBR328, and pBR325.

"Nontoxinogenic fragments of the Shiga-like toxin structural gene(s) may be moved from BL3 + EK1 to BL2 + EK1 containment conditions or such nontoxic fragments may be directly cloned in *E. coli* K–12 under BL2 + EK1 conditions provided that the *E. coli* host-vector systems containing the fragments do not contain overlapping fragments which together would encompass the Shiga-like toxin structural gene(s).

Dr. O'Brien is now requesting permission to clone SLT structural genes, defined either by nucleotide sequence homology with SLT gene probes from *E. coli* or by antigenic cross-reactivity of their gene products with purified *E. coli* SLT, from bacterial species classified in the families *Enterobacteriaceae* or *Vibrionaceae* into *E. coli* K–12 under conditions similar to those specified in the previous permission. Dr. O'Brien wishes to broaden the scope of study of SLT toxin for the following reasons: (1) To investigate the potential role of SLT in the pathogenicity of a variety of bacteria; (2) to compare the SLT genes from various pathogenic bacteria; and (3) to facilitate the development of an experimental *Vibrio cholerae* vaccine strain deleted for SLT genes.

Dr. O'Brien has supplied information supporting this request to ORDA.

II. Request To Clone a Hybrid Toxin Gene in E. Coli K–12

Dr. John Murphy of the University Hospital of Boston University Medical Center requests permission to construct a hybrid molecule in which the gene coding for interleukin-2 (IL2) is joined to a segment of the gene encoding diphtheria toxin. The diphtheria toxin segment encodes the A subunit and portions of the B subunit. The hybrid gene would be cloned in *E. coli* K–12 host-vector systems.

III. Proposed Amendments of Appendix C–III of the NIH Guidelines

BioTechnica International, Cambridge, Massachusetts, proposes the following amendments to Appendix C–III of the NIH Guidelines. The first paragraph of Appendix C–III would be amended to read as follows:

Experiments which use *Saccharomyces cerevisiae* host-vector systems, with the exception of experiments listed below, are exempt from these Guidelines.

This amendment would extend the current exemption to include strains other than "laboratory strains."

A new second paragraph would be added to Appendix C–III to read as follows:

Experiments which use *Saccharamyces uvarum* host-vector systems, with the exception of experiments listed below, are exempt from these Guidelines.

The company has provided information concerning this request to ORDA.

IV. Points To Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols

Proposed "Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols" were published for comment in the **Federal Register** of January 22, 1985 (50 FR 2940). Readers are referred to that announcement for detailed background information and the roster of the RAC Working Group on Human Gene Therapy. Fifteen letters were received during the comment period. Based on those comments, the RAC Working Group on Human Gene Therapy met on April 1, 1985, and prepared a revised proposed Points to Consider. The revised proposed Points to Consider and letters of comment were reviewed by the full RAC at its meeting on May 3, 1985. After extensive discussion, the RAC voted to incorporate changes suggested at the meeting, to accept the revised Points to Consider as a working document, and to republish the document for further comment. An additional section, entitled "Applicability," has been added to emphasize that the Points to Consider apply only to institutions receiving support for recombinant DNA research from the NIH.

The following Points to Consider document incorporating the recommended changes is now published for public comment. Comments received will be circulated to all RAC and working group members. The Points to Consider document and the public comments received will be considered at the next RAC meeting on September 23, 1985.

NATIONAL INSTITUTES OF HEALTH POINTS TO CONSIDER IN THE DESIGN AND SUBMISSION OF HUMAN SOMATIC-CELL GENE THERAPY PROTOCOLS

Working Group on Human Gene Therapy NIH Recombinant DNA Advisory Committee

Outline

Applicability

These "Points to Consider" apply only to research conducted at or sponsored by an institution that receives any support for recombinant DNA research from the National Institutes of Health (NIH). This includes research performed by NIH directly.

Introduction

(1) Experiments in which recombinant DNA [1] is introduced into cells of a human subject with the intent of stably modifying the subject's genome are covered by Section III–A–4 of the NIH Guidelines for Research Involving Recombinant DNA Molecules (49 FR 46266). Section III–A–4 requires such experiments to be reviewed by the NIH Recombinant DNA Advisory Committee (RAC) and approved by the NIH. RAC consideration of each proposal will be on a case-by-caes basis and will follow publication of a precis of the proposal in the **Federal Register**, an opportunity for public comment, and a review of the proposal by the working group of the RAC. RAC recommendations on each proposal will be forwarded to the NIH Director for a decision which will then be published in the **Federal Register**. In accordance with Section IV–C–1–b of the NIH Guidelines, the NIH Director may approve proposals only if he finds that they present "no significant risk to health or the environment."

(2) In general, it is expected that somatic-cell gene therapy protocols will not present a risk to the environment as the recombinant DNA is expected to be confined to the human subject. Nevertheless, Section I–B–4–b of the "Points to Consider" document asks the researchers to address specifically this point.

(3) This document is intended to provide guidance in preparing proposals for NIH consideration under Section III–A–4 of the NIH Guidelines for Research Involving Recombinant DNA Molecules. Not every point mentioned in the "Points to Consider" document will necessarily require attention in every proposal. It is expected that the document will be considered for revision at least annually as experience in evaluating proposal accumulates and as new scientific developments occur.

(4) A proposal will be considered by the RAC only after the protocol has been approved by the local Institutional Biosafety Committee (IBC) and by the local Institutional Review Board (IRB) in accordance with Department of Health and Human Services (DHHS) Regulations for the Protection of Human Subjects (45 CFR Part 46). If a proposal involves children, special attention should paid to subpart D of these DHHS regulations. The IRB and IBC may, at their discretion, condition their approval on further specific deliberation by the RAC and its working group.

Consideration of gene therapy proposals by the RAC may proceed simultaneously with review by any other involved federal agencies [2] provided that the RAC

[1] Section III–A–4 applies to both recombinant DNA and DNA derived from recombinant DNA.

[2] The Food and Drug Administration (FDA) has jurisdiction over drug products intended for use in

Continued

is notified of the simultaneous review. Meetings of the committee will be open to the public except where trade secrets or proprietary information will be disclosed. The committee would prefer that the first proposal submitted for RAC review contain no proprietary information or trade secrets, enabling all aspects of the review to be open to the public. The public review of these protocols will serve to inform the public not only on the technical aspects of the proposals but also on the meaning and significance of the research.

(5) The clinical application of recombinant DNA techniques to human gene therapy raises two general kinds of questions: (1) The questions usually discussed by IRBs in their review of *any* proposed research involving human subjects; and (2) broader social issues. The first type of question is addressed principally in Part I of this document. Several of the broader social issues surrounding human gene therapy are discussed later in this Introduction and in Part II below.

(6) Following the Introduction, this document is divided into four parts. Part I deals with the short-term risks and benefits of the proposed research to the patient [3] to other people, as well as with issues of fairness in the selection of patients, informed consent, and privacy and confidentiality. In Part II, investigators are requested to address special issues pertaining to the free flow of information about clinical trials of gene therapy. These issues lie outside the usual purview of IRBs and reflect general public concerns about biomedical research. Part III summarizes other requested documentation that will assist the RAC and its working group in their review of gene therapy proposals. Part IV specifies reporting requirements.

(7) A distinction should be drawn between making genetic changes in somatic cells and in germ line cells. The purpose of somatic cell gene therapy is to treat an individual patient, e.g., by inserting a properly functioning gene into a patient's bone marrow cells *in vitro* and then reintroducing the cells into the patient's body. In germ line alterations, a specific attempt is made to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the set of genes passed on to the individual's offspring. The RAC and its working group will not at present entertain proposals for germ line alterations but will consider for approval protocols involving somatic-cell gene therapy.

(8) The acceptability of human somatic-cell gene therapy has been addressed in several recent documents as well as in numerous academic studies. The November 1982 report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, *Splicing Life*, resulted from a two-year process of public deliberations and hearings; upon release of that report, a House subcommittee held three days of public hearings with witnesses from a wide range of fields from the biomedical and social sciences to theology, philosophy, and law. In December 1984, the Office of Technology Assessment released a background paper, *Human Gene Therapy*, which brought these earlier documents up-to-date. As the latter report concluded:

> Civic, religious, scientific, and medical groups have all accepted, in principle, the appropriateness of gene therapy of somatic cells in humans for specific genetic diseases. Somatic cell gene therapy is seen as an extension of present methods of therapy that might be preferable to other technologies.

(9) Concurring with this judgment, the RAC and its working group are prepared to consider for approval somatic-cell therapy protocols, provided that the design of such experiments offers adequate assurance that their *consequences* will not go beyond their *purpose*, which is the same as the traditional purpose of all clinical investigations, namely, to benefit the health and well-being of the individual being treated while at the same time gathering generalizable knowledge.

(10) The two possible undesirable consequences of somatic-cell therapy would be unintentional (1) vertical transmission of genetic changes from an individual to his or her offspring or (2) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, this document requests information that will enable the RAC and its working group to assess the likelihood that the proposed somatic-cell gene therapy will inadvertently affect reproductive cells or lead to infection of other people (e.g., treatment personnel or relatives).

(11) In recognition of the social concern that surrounds the general discussion of human gene therapy, the working group will continue to consider the possible long-range effects of applying knowledge gained from these and related experiments. While research in molecular biology could lead to the development of techniques for germ line intervention or for the use of genetic means to enhance human capabilities rather than to correct defects in patients, the working group does not believe that these effects will follow immediately or inevitably from experiments with somatic-cell gene therapy. The working group will cooperate with other groups in assessing the possible long-term consequences of somatic-cell gene therapy and related laboratory and animal experiments in order to define appropriate human applications of this emerging technology.

(12) Responses to the questions raised in these "Points to Consider" should be provided in the form of either written answers or references to specific sections of the protocol or its appendices.

I. Description of Proposal

A. Objectives and Rationale of the Proposed Research

State concisely the overall objectives and rationale of the proposed study. Please provide information on the following specific points:

1. Why is the disease selected for treatment by means of gene therapy a good candidate for such treatment?

2. Describe the natural history and range of expression of the disease selected for treatment. In your view, are the usual effects of the disease predictable enough to allow for meaningful assessment of the results of gene therapy?

3. Is the protocol designed to prevent all manifestations of the disease, to halt the progression of the disease after symptoms have begun to appear, or to reverse manifestations of the disease in seriously ill victims?

4. What alternative therapies exist? In what groups of patients are these therapies effective? What are their relative advantages and disadvantages as compared with the proposed gene therapy?

B. Research Design, Anticipated Risks and Benefits

1. Structure and Characteristics of the Biological System

Provide a full description of the methods and reagents to be employed for gene delivery and the rationale for their use. The following are specific points to be addressed:

a. What is the structure of the cloned DNA that will be used?

(1) Describe the gene (genomic or cDNA), the bacterial plasmid or phage

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clinical trials of human somatic-cell gene therapy. For general information on FDA's policies and regulatory requirements, please see the **Federal Register**, Volume 49, pages 50678–80, 1984.

[3] The term "patient" and its variants are used in the text as a shorthand designation for "patient subject."

vector, and the delivery vector (if any). Provide complete sequence analysis or a detailed restriction map of the total construct.

(2) What regulatory elements does the construct contain (e.g., promoters, enhancers, polyadenylation sites, replication origins, etc.)?

(3) Describe the steps used to derive the DNA construct.

b. What is the structure of the material that will be administered to the patient?

(1) Describe the preparation, structure, and composition of the materials that will be given to the patient or used to treat the patient's cells.

(a) If DNA, what is the purity (both in terms of being a single DNA species and in terms of other contaminants)? What tests have been used and what is the sensitivity of the tests?

(b) If a virus, how is it prepared from the DNA construct? In what cell is the virus grown (any special features)? What medium and serum are used? How is the virus purified? What is its structure and purity? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials (nucleic acids, proteins, etc.) or contaminating viruses or other organisms in the cells or serum?

(2) Describe any other material to be used in preparation of the material to be administered to the patient. For example, if a viral vector is proposed, what is the nature of the helper virus or cell line? If carrier particles are to be used, what is the nature of these?

2. Preclinical Studies, Including Risk-Assessment Studies

Describe the experimental basis (derived from tests in cultured cells and laboratory animals) for claims about the efficacy and safety of the proposed system for gene delivery.

a. *Laboratory studies of the delivery system.* (1) What cells are the intended recipients of gene therapy? If recipient cells are to be treated *in vitro* and returned to the patient, how will the cells be characterized before and after treatment? What is the theoretical and practical basis for assuming that only the treated cells will act as recipients?

(2) Is the delivery system efficient? What percentage of the target cells contain the inserted DNA?

(3) How is the structure of the added DNA sequences monitored and what is the sensitivity of the analysis? Is the added DNA extrachromosomal or integrated? Is the added DNA unrearranged?

(4) How many copies are inserted per cell? How stable is the inserted DNA both in terms of its continued presence and its structural stability?

b. *Laboratory studies of gene expression.* Is the inserted gene expressed? To what extent is expression only from the desired gene (and not from the surrounding DNA)? In what percentage of cells does expression occur? Is the product biologically active? What percentage of normal activity results from the inserted gene? Is the gene expressed in cells other than the target cells? If so, to what extent?

c. *Laboratory studies pertaining to the safety of the delivery/expression system.* (1) If a retroviral system is used:

(a) What cell types have been infected with the retroviral vector preparation? Which cells, if any, produce infectious particles?

(b) How stable are the retroviral vector and the resulting provirus against loss, rearrangement, recombination, or mutation? What information is available on how much rearrangement or recombination with endogenous or other viral sequences is likely to occur in the patient's cells? What steps have been taken in designing the vector to minimize instability or variation? What laboratory studies have been performed to check for stability, and what is the sensitivity of the analyses?

(c) What laboratory evidence is available concerning potential harmful effects of the treatment, e.g., development of neoplasia, harmful mutations, regeneration of infectious particles, or immune responses? What steps have been taken in designing the vector to minimize pathogenicity? What laboratory studies have been performed to check for pathogenicity, and what is the sensitivity of the analyses?

(d) Is there evidence from animal studies that vector DNA has entered untreated cells, particularly germ line cells? What is the sensitivity of the analyses?

(e) Has a protocol similar to the one proposed for a clinical trial been carried out in non-human primates and/or other animals? What were the results? Specifically, is there any evidence that the retroviral vector has recombined with any endogenous or other viral sequences in the animals?

(2) If a non-retroviral delivery system is used: What animal studies have been done to determine if there are pathological or other undesirable consequences of the protocol (including insertion of DNA into cells other than those treated, particularly germ line cells)? How long have the animals been studied after treatment? What tests have been used and what is their sensitivity?

3. *Clinical Procedures, Including Patient Monitoring*

Describe the treatment that will be administered to patients and the diagnostic methods that will be used to monitor the success or failure of the treatment. If previous clinical studies using similar methods have been performed by yourself or others, indicate their relevance to the proposed study.

a. Will cells (e.g., bone marrow cells) be removed from patients and treated *in vitro* in preparation for gene therapy? If so, what kinds of cells will be removed from the patients, how many, how often, and at what intervals?

b. Will patients be treated to eliminate or reduce the number of cells containing malfunctioning genes (e.g., through radiation or chemotherapy) prior to gene therapy?

c. What treated cells (or vector/DNA combination) will be given to patients in the attempt to administer gene therapy? How will the treated cells be administered? What volume of cells will be used? Will there be single or multiple treatments? If so, over what period of time?

d. What are the clinical endpoints of the study? How will patients be monitored to assess specific effects of the treatment on the disease? What is the sensitivity of the analyses? How frequently will follow-up studies be done? How long will patient follow-up continue?

e. What are the major potential beneficial and adverse effects of treatment that you anticipate? What measures will be taken in an attempt to control or reverse these adverse effects if they occur? Compare the probability and magnitude of potential adverse effects on patients with the probability and magnitude of deleterious consequences from the disease if gene therapy is not performed.

f. If a treated patient dies, what special studies will be performed as part of the autopsy?

4. Public-Health considerations

Describe any potential benefits and hazards of the proposed therapy to persons other than the patients being treated. Specifically:

a. On what basis are potential public health benefits or hazards postulated?

b. Is there a significant likelihood that the inserted DNA will spread from the patient to other persons or to the environment?

c. Will any precautions be taken against such spread (e.g., to patients

sharing a room, health-care workers, or family members)?

d. What measures will be undertaken to mitigate the risks, if any, to public health?

5. Qualifications of Investigators, Adequacy of Laboratory and Clinical Facilities

Indicate the relevant training and experience of the personnel who will be involved in the preclinical studies and clinical administration of gene therapy. In addition, please describe the laboratory and clinical facilities where the proposed study will be performed.

a. What professional personnel (medical and nonmedical) will be involved in the proposed study? What are their specific qualifications and experience with respect to the disease to be treated and with respect to the techniques employed in molecular biology? Please provide *curricula vitae* (see Section III–D).

b. At what hospital or clinic will the treatment be given? Which facilities of the hospital or clinic will be especially important for the proposed study? Will patients occupy regular hospital beds or clinical research center beds? Where will patients reside during the follow-up period?

C. Selection of Patients

Estimate the number of patients to be involved in the proposed study of gene therapy. Describe recruitment procedures and patient eligibility requirements, paying particular attention to whether these procedures and requirements are fair and equitable.

1. How many patients do you plan to involve in the proposed study?

2. How many eligible patients do you anticipate being able to identify each year?

3. What recruitment procedures do you plan to use?

4. What selection criteria do you plan to employ? What are the exclusion and inclusion criteria for the study?

5. How will patients be selected if it is not possible to include all who desire to participate?

D. Informed Consent

Indicate how patients will be informed about the proposed study and how their consent will be solicited. The consent procedure should adhere to the requirements of DHHS regulations for the protection of human subjects (45 CFR Part 46). If the study involves pediatric or mentally handicapped patients, describe procedures for seeking the permission of parents or guardians and, where applicable, the assent of each patient. Areas of special concern highlighted below include potential adverse effects, financial costs, privacy, and long-term follow-up.

1. How will the major points covered in Sections I–A through I–C of this document be disclosed to potential participants in this study and/or parents or guardians in language that is understandable to them?

2. How will the innovative character and the theoretically-possible adverse effects of gene therapy be discussed with patients and/or parents or guaradians? How will the potential adverse effects be compared with the consequences of the disease? What will be said to convey that some of these adverse effects, if they occur, could be irreversible?

3. What explanation of the financial costs of gene therapy and any available alternative therapies will be provided to patients and/or parents or guardians?

4. Will patients and/or their parents or guardians be informed that the innovative character of gene therapy may lead to great interest by the media in the research and in treated patients? What special procedures, if any, will be followed to protect the privacy of patients and their families?

5. Will patients and/or their parents or guardians be informed:

a. That some of the procedures performed in the study will be irreversible.

b. That following the performance of such procedures it would not be medically advisable for patients to withdraw from the study?

c. That a willingness to cooperate in long-term follow-up (for at least three to five years) will be a precondition for participation in the study?

d. That a willingness to permit an autopsy to be performed in the event of a patient's death following treatment is also a precondition for a patient's participation in the study? (This stipulation is included because an accurate determination of the precise cause of a patient's death would be of vital importance to all future gene therapy patients.)

E. Privacy and Confidentiality.

Indicate what measures will be taken to protect the privacy of gene therapy patients and their families as well as to maintain the confidentiality of research data.

1. What provisions will be made to honor the wishes of individual patients (and the parents or guardians of pediatric or mentally handicapped patients) as to whether, when, or how the identity of patients is publicly disclosed?

2. What provision will be made to maintain the confidentiality of research data, at least in cases where data could be linked to individual patients?

II. Special Issues

Although the following issues are beyond the normal purview of local IRBs, the RAC and its working group request that investigators respond to questions A and B below.

A. What steps will be taken to ensure that accurate information is made available to the public with respect to such public concerns as may arise from the proposed study?

B. Do you or your funding sources intend to protect under patent or trade secret laws either the products or the procedures developed in the proposed study? If so, what steps will be taken to permit as full communication as possible among investigators and clinicians concerning research methods and results?

III. Requested Documentation

In addition to responses to the questions raised in these "Points to Consider," please submit the following materials:

A. Your protocol as approved by your local IRB and IBC. The consent form, which must have IRB approval, should be submitted to the NIH only on request.

B. Local IRB and IBC minutes and recommendations that pertain to your protocol.

C. A one-page scientific abstract of the gene therapy protocol.

D. A one-page description of the proposed experiment in nontechnical language.

E. *Curricula vitae* for professional personnel.

F. An indication of other federal agencies to which the protocol is being submitted for review.

G. Any other material which you believe will aid in the review.

IV. Reporting Requirements

A. Serious adverse effects of treatment should be reported immediately to both your local IRB and the NIH Office for Protection from Research Risks, and a written report should be filed with both groups. A copy of the report should also be forwarded to the NIH Office of Recombinant DNA Activities (ORDA).

B. Reports regarding the general progress of patients should be filed at six-month intervals with both your local IRB and ORDA. These twice-yearly reports should continue for a sufficient period of time to allow observation of major effects (at least three to five

years). In the event of a patient's death, the autopsy report should be submitted to the IRB and ORDA.

Dated: August 9, 1985.

James B. Wyngaarden,

Director, National Institutes of Health.

[OMB's "Mandatory Information requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.]

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federal register

Monday
August 19, 1985

Part V

Department of Agriculture

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under its Jurisdiction; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Food Distribution Program Regulations (7 CFR Part 250) by: (1) Strengthening provisions for inventory controls, use of program funds, audits, storage facilities and management evaluation reviews; (2) restructuring to provide for greater ease in the reading and understanding of the regulations; (3) revising provisions for the renewal of agreements; and (4) strengthening provisions for the processing of donated foods.

DATE: To be assured of consideration comments must be received or postmarked on or before November 18, 1985.

ADDRESS: Comments should be sent to: Beverly A. King, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

Comments in response to these rules may be inspected at 3101 Park Center Drive, Room 506, Alexandria, Virginia during normal business hours (8:30 a.m. to 5:00 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Beverly A. King, Chief, Program Administration Branch (703) 756-3660.

SUPPLEMENTARY INFORMATION: Any new information collection and recordkeeping requirements contained in this rule are subject to approval by the Office of Management and Budget before becoming effective.

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more nor will it have a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action 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.

This rule has been reviewed with regard to the Regulatory Flexibility Act (Pub. L. 96-354). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.550 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

Background

The regulations governing the Food Distribution Program (7 CFR Part 250) outline the responsibilities of the Food and Nutrition Service (FNS) and distributing agencies concerning the distribution and use of federally donated foods. The current regulations provide for the distribution of donated foods to a variety of domestic outlets, including entities participating in the child nutrition programs and nutrition programs for the elderly, charitable institutions, nonprofit summer camps for children, and certain low-income households and disaster organizations.

In accordance with Executive Order 12044, Part 250 was reviewed and determined to be in need of overall revision. A preliminary notice of intent to revise and republish the regulations appeared on June 22, 1979, (44 FR 36396) in the **Federal Register.**

Part 250 has not been subjected to an in-depth analysis to determine if all provisions provide for an efficient and effective administration of the Food Distribution Program since 1966. A Prenotice was published on December 16, 1980, (45 FR 82890), announcing that FNS had reviewed the provisions set forth under Part 250 to determine their adequacy and, as a result of that review, had determined that the regulations were in need of revision to strengthen existing provisions, including additional provisions to enhance program operations. Comments were solicited to assist FNS in developing regulations which will provide for a more efficient and effective operation of the Food Distribution Program.

Analysis of Comments

On December 16, 1980, FNS published a Prenotice which identified specific provisions contained in the Food Distribution Program Regulations (7 CFR Part 250) which were considered to be in need of revision. In an effort to assist FNS in revising Part 250, comments were solicited on these as well as all other provisions contained in Part 250. Sixty days were afforded the general public for comment on the proposed revision. Twenty-two comment letters were received. Comments were received from distributing agencies, FNS Regional Offices (FNSRO), School Lunch Program Managers, the Federation of Protestant Welfare Agencies and the National Indian Food and Nutrition Resource Center.

Restructuring

In an effort to simplify the organization of Part 250, various techniques for restructuring were discussed in the Prenotice. A total of 12 comments were recevied. Seven of the comments expressed a preference that the provisions be provided under one CFR Part with separate subparts as they relate to programs being served. Other commenters preferred the use of separate parts or a "question-and-answer" format.

This proposed rule sets forth the provisions under one part with separate subparts for: (1) General, (2) General Operating Provisions, (3) Processing and Labeling of Donated Foods, and (4) Eligible Recipient Agencies. This restructuring will provide for greater ease in the reading and understanding of the regulations and will do so in a manner that eliminates the need for a significant amount of repetition.

Three comments were received concerning the quoting of legislative provisions. One commenter suggested that the quoted provisions be deleted, one recommended that they be maintained, and one recommended that they be noted in the margins. The quoted legislative provisions have been deleted in the proposed rule. However section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended; sections 6 and 14 of the National School Lunch Act, as amended; section 32 of Pub. L. 74-320 as amended; section 311 of the Older Americans Act of 1965, as amended; section 416 of the Agricultural Act of 1949, as amended; and section 709 of the Food and Agriculture Act of 1965, as amended; have been included under definitions. These sections authorize the purchase and donation of food items. FNS will make available a summary of legislation authorizing food donations upon request.

Eligibility Determination for Recipient Agencies and Recipients

Section 250.6 of the current regulations requires distributing agencies to determine that recipient agencies or recipients to whom they distribute donated foods are eligible. The current regulations do not require distributing agencies to enter into an agreement and make donated foods available to all agencies which have applied for participation in the program and have been determined to be eligible.

Section 250.11 of the proposed rule has been revised to require that distributing agencies determine the eligibility of all applicants, to enter into agreements with those which are determined to be eligible and to make donated foods available. This requirement will ensure that all eligible recipient agencies which wish to participate in the program are afforded that opportunity.

Agreements

Section 250.5(c) of the current regulations requires distributing agencies to enter into an agreement with the Department prior to the inauguration of a distribution program. Section 250.12(a) of the proposed regulations contains this provision and requires those agreements to be effective for no longer than one year and to be completed by September 30 of each year. The September 30 requirement is being added to make the term of these agreements coincide with the Federal fiscal year, facilitating compliance with reporting requirements which are generally on a fiscal year basis. In addition, § 250.12(a) of the proposed rule requires State Agencies on Aging which receive cash in lieu of commodities in connection with a Nutrition Program for the Elderly to enter into an agreement with the Department which is effective for no longer than one year and completed by September 30 of each year. This requirement is necessary since Federal agencies may not obligate funds which have not yet been appropriated by the Congress, as would happen if such an agreement spanned two fiscal years.

Section 250.6(b) of the current regulations requires distributing agencies to enter into written agreements with subdistributing agencies and recipient agencies. In § 250.12(b) the Department is proposing to require that these agreements are also renewed annually. The Department believes that an annual agreement requirement will increase program accountability by requiring distributing agencies to regularly review their agreements with subdistributing agencies and recipient agencies.

Transfer of Donated Foods

Section 250.4(a) of the current regulations permits the transfer of donated foods between recipient agencies with the authorization of the distributing agency if such transfer is determined to be in the best interest of the program. As a result of donated foods being transferred to recipient agencies which were not eligible to receive them, § 250.13(a)(1) of the proposed rule requires that recipient agencies receive authorization from the distributing agency *and* the appropriate FNSRO prior to transferring donated foods which have been provided as part of an approved food package or authorized program level of assistance. Recipient agencies may continue to transfer donated foods which have been provided in addition to the State's authorized program level of assistance with prior authorization of the distributing agency alone.

Storage Facilities

Standards—Seven comments were received concerning the establishment of standards by FNS for use in determining whether a warehouse has proper facilities to safeguard against theft, spoilage and other loss. Four commenters opposed the development of warehousing standards by FNS and recommended the use of existing Federal and State requirements. To avoid possible conflict between FNS requirements, other existing Federal requirements and State requirements, Section 250.14(a) of the proposed rule sets forth only general standards for storage facilities and requires distributing agencies, subdistributing agencies and recipient agencies reasonsible for the contracting of storage facilities to ensure that the warehouse facilities meet existing Federal, State or local Health Department standards, whichever are more stringent.

Reviews—Fourteen comments were received concerning FNS' Prenotice proposal to require distributing agencies, subdistributing agencies and recipient agencies which are responsible for the contracting of storage facilities to conduct a review of the facilities prior to entering into or renewing a contract for the handling, storage and distribution of donated foods.

Nine commenters supported the proposal. Three commenters suggested that reviews be left to the discretion of the distributing agency. Some distributing agencies already conduct periodic inspections. One commenter suggested that facilities be inspected as part of administrative reviews and one commenter opposed the requirement on the grounds that the agencies involved lacked the necessary funds, personnel and technical knowledge.

Section 250.6(q) of the current regulations and § 250.14(a) of the proposed regulations require distributing agencies, subdistributing agencies and recipient agencies to provide storage facilities which will safeguard against theft, spoilage and other loss. To ensure that donated foods are stored in such a manner, § 250.14(b) of the proposed rule requires that the distributing agency ensure that a review of the storage facilities has been conducted prior to contracting or renewing a contract for the handling, storage, and distribution of donated foods.

Contracts—Comments were requested in the Prenotice concerning the requirement for a written contract between the distributing agency, subdistributing agency or recipient agency and the storage facility. Seven comments were received in support of requiring a written contract. One commenter opposed the requirement on the basis of the additional paperwork that would result.

In the event that donated foods are not properly stored and a loss occurs, the lack of a written contract setting forth the terms and conditions for the storage of the food could result in the responsible agency being placed in a difficult position should an attempt be made to recoup the loss. Thus, § 250.14(c) of the proposed rule requires distributing agencies, subdistributing agencies and recipient agencies to enter into annual written contracts with storage facilities which set forth the terms and conditions for the handling, storage, and distribution of donated foods.

Physical Inventory—Accountability and monitoring of donated foods are two areas that have been under close scrutiny as a result of nationwide audits conducted both by the Department's Office of Inspector General (OIG) and the General Accounting Office (GAO). OIG found that the system presently in use is inefficient for monitoring levels of donated foods.

In its 1981 report concerning the Food Distribution Program and the Department's overall commodity donation system, GAO stated that although program regulations provide that the distributing agency require subdistributing agencies and recipient agencies to maintain accurate and complete inventory records, there were many instances of general disregard of

this requirement. To alleviate the problems addressed in its audit, GAO made recommendations which would provide for better accountability of donated foods by recipient agencies. Specifically GAO stated that FNS should require that all recipient agencies take periodic physical inventories. The results would be submitted to the distributing agency along with copies of source documents used, and an explanation of any differences between physical inventory counts and the perpetual inventory balance.

To ensure stricter inventory controls and accountability of donated foods, § 250.14(d) of the proposed rule requires distributing agencies, subdistributing agencies, and recipient agencies to conduct semiannual physical inventories of all storage facilities being utilized for the handling, storage, and distribution of donated foods by June 30 and December 30 of each year. The physical inventory information is to be submitted to the appropriate FNSRO as part of the monthly inventory report for the months of June and December.

To determine what additional costs would be incurred by Federal, State, or local government agencies and benefits which would be derived as a result of this provision of the proposed rule, a cost/benefit analysis has been completed. The cost/benefit analysis is limited to the additional requirements associated with conducting semiannual physical inventories. A copy of the cost/benefit analysis will be made available upon request.

Excessive inventories—OIG and GAO also disclosed problems associated with excessive inventory levels. OIG recommended that FNS develop procedures to determine when inventory levels are in excess. The GAO audit disclosed that retention of excess inventories resulted in storage cost increase, greater potential for infestation and spoilage, and difficulty in effectively utilizing commodities. As recommended by GAO, § 250.14(e) of the proposed rule limits the level of inventory to a six-month supply. Distributing agencies will be required to determine if inventories at the subdistributing and recipient agency levels are excessive. Subdistributing agencies and recipient agencies may submit justifications for the retention of inventories exceeding a six-month level. The distributing agency will be responsible for approving or rejecting such justifications and monitoring inventory reports to ensure that the approved inventory level is not exceeded.

The FNSRO will monitor inventories of distributing agencies and approve or reject justifications submitted to them concerning excess inventory limits.

Claims for Improper Distribution of Loss of, or Damage to, Donated Foods

Section 250.6(m) of the current regulations requires distributing agencies to pursue claims arising in their favor immediately upon receipt of information regarding commodity loss, damage, or improper distribution. Certain exemptions from claims actions are provided for in instances of minimal inventory shortages or losses. FNS proposed in the Prenotice a revision of this section to clarify responsibilities of distributing agencies relative to required actions and timeframes. Seven comments were received concerning this proposal. Six commenters favored the revision of this section.

The distributing agency is liable to the Department for any claim which arises within the State as a result of donated foods which are improperly distributed, lost or damaged. However, § 250.15 (c) and (f)(1) have been reserved for further consideration as to the procedures for pursuing claims and the use of funds accrued as a result of such claims that should be set forth in the regulations.

Use of Program Funds

Allowable Administrative Expenses—Section 250.6(k) of the current regulations provides that funds which are derived from the sale of donated food containers, salvaged commodities, distribution or service charges assessed to recipient agencies, insurance, or recoveries from loss or damage claims may be used only for program purposes. Program purposes for which these funds can be used include transportation, storage and handling of foods, salaries of food distribution employees and other administrative expenses. FNS proposed in the Prenotice to expand this section to provide specific examples of "other administrative expenses."

A total of 11 comments was received concerning this proposal. Three commenters recommended that this section not be expanded to provide specific examples. Three commenters recommended that program funds be allowed the same usage as State administrative expense funds. Some commenters recommended that considerable latitude should be allowed in defining what expenses should be considered "administrative" while others provided examples of what expenses should or should not be allowed.

In an effort to provide as much flexibility as possible in the use of program funds, § 250.15(f)(2) of the proposed rule specifies the expenses for which program funds cannot be used, as described in Office of Management and Budget (OMB) Circular A-87, rather than attempting to provide an exhaustive list of allowable expenses.

Excess Funds—Section 250.6(k) also requires distributing agencies to review the receipt and expenditure of funds accruing from the sale of donated-food containers, salvaged commodities, distribution or service charges assessed to recipient agencies, insurance, or recoveries from loss or damage claims at least annually to determine that fund balances "are not in excess of program needs." FNS proposed in the Prenotice to expand this section to provide more precise guidelines to aid distributing agencies in determining when funds are "excess."

FNS received a total of 13 comments concerning this proposal. Eight commenters recommended that no dollar limit be set because distributing agencies use such funds for widely varying purposes. Other commenters recommended methods such as using an average of the previous three months' expenditures or the previous three years' expenditures.

Since distributing agencies use these funds for different purposes, no specific dollar limit is proposed. Section 250.15(f)(3) of the proposed rule defines "excess funds" as funds exceeding the previous three months' expenditures. The total expenditures for the previous three months is the "maximum" amount of funds which the distributing agency may have in its account. Funds which exceed this amount will be considered in excess of program needs unless the distributing agency provides justification as to the need for such funds and the justification is approved by the FNSRO. In some instances the FNSRO may consider funds equal to or less than the expenditures for the previous three months to be in excess of what is needed. In such instances the distributing agency will be required to reduce such funds. Expenditures of a nonrecurring nature will not be included when determining total expenditures for the previous three months.

Audit Requirements

Distributing agency-sponsored audits—Sections 250.6(t), 250.12(g) and 250.13(g) of the current regulations merely state the right of inspection and audit of pertinent records, reports, facilities or procedures by USDA representatives. The current regulations do not contain specific guidance on audits.

FNS proposed in the Prenotice the consolidation of the three sections

regarding audits and the inclusion of the following requirements: (1) Accessibility of records to representatives of the United States General Accounting Office; (2) State agency responses to Federal audit findings; (3) Distributing agency-sponsored audits to be conducted with appropriate frequency, depending on the volume or value of commodity assistance provided; (4) Development and implementation of corrective action on program deficiencies; and (5) Review of distributing agency-sponsored audit reports by the Department.

A total of 10 comments was received concerning the proposed expansion. Nine commenters supported the proposal.

Six comments were received relative to the frequency of conducting distributing agency audits. Three commenters recommended two-year intervals, one commenter recommended a three-year interval, and two recommended that they be made with "reasonable" frequency.

Section 250.18 of the proposed rule states the right of inspection and audit of pertinent records, reports, facilities or procedures by the Secretary, the Comptroller General of the United States, or any of their duly authorized representatives such as the Office of the Inspector General and the General Accounting Office.

In addition, this section requires each distributing agency to provide for audits of all food distribution program operations including records pertaining to donated food acquisition, storage, distribution, processing activities within the State (except for that of multi-State processors) and financial information. Such audits shall be conducted in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (7 CFR Part 3015, Subpart I).

One commenter asked "who pays" for distributing agency-sponsored audits. Section 250.18(c) of the proposed rule provides that the cost of such audits may be considered part of administrative costs. Thus, State administrative expense funds may be used to pay any costs incurred for conducting audits of child nutrition programs in accordance with Part 235 of this chapter. In any case, the cost of distributing agency-sponsored audits is a distributing agency responsibility.

The proposed rule also requires that distributing agencies develop a written response to the FNSRO addressing deficiencies identified through Federal and distributing agency-sponsored audits. The response must include corrective action which has been or will be taken to eliminate any deficiency, timeframes for the implementation and completion of such action, a determination of what caused the deficiency, and deficiencies which have been identified that the distributing agency takes exception to and an explanation for the exception. The response must be submitted in accordance with timeframes established by the FNSRO.

Multi-State processors—The Department believes that to require each distributing agency to audit all processors which contract with contracting agencies within that State would be burdensome and duplicative. Therefore, Section 250.18 requires distributing agencies to audit only the processing activities within the State of any non-multi-State processors. "Multi-State processor" has been defined in § 250.3 as a processor which has entered into processing contracts with contracting agencies in more than one State or a processor which has entered into a processing contract with one or more contracting agencies located in a State other than the one in which the processor is located. In order to ensure that these processors are properly monitored without requiring distributing agencies to travel to the site of a processor in another State, § 250.18 requires that multi-State processors obtain an annual independent audit by a certified public accountant (CPA). Like the distributing agency-sponsored audits, these audits shall be conducted in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (7 CFR Part 3015, Subpart I). In addition, FNS will develop audit guidelines for use by the auditors to ensure that such audits are of sufficient scope to include a thorough review of program requirements. FNS will provide training for auditors of multi-State processors in accordance with requirements prescribed by the Secretary on the use of these guidelines. All costs associated with the CPA audit, including those travel expenses to attend any FNS training sessions, will be borne by the processor. All audit findings must be submitted by the processor to FNS.

Multi-State processors are also required to develop a written response addressing deficiencies identified through annual CPA audits. The response must include the same type of information as described in § 250.18 and must be submitted to FNS in accordance with timeframes established by FNS. Such information will be used by FNS in establishing priorities for multi-State processor reviews.

Management Evaluation Reveiws

Section 250.13(i) of the current regulations requires distributing agencies to monitor and review their operations to ensure compliance with provisions of the regulations and applicable FNS instructions.

Section 250.19 of the proposed rule would expand the current regulations to include procedures which will ensure accountability and high quality service to recipients of benefits while providing distributing agencies with flexibility in conducting reviews. This review system will provide both FNS and distributing agencies with a tool to identify program strengths and weaknesses and to evaluate the effectiveness of the distribution system.

In addition, § 250.19 of the proposed rule requires a review of certain recipient agencies (charitable institutions, nutrition programs for the elderly, and nonprofit summer camps for children). The proposed regulations also require that an annual review be conducted of storage facilities, processors (except those which are multi-State) and food service management companies. Multi-State processors are subject to review by FNSRO and/or FNS. The Department is proposing to limit the review requirement to those recipient agencies which are not already subject to review under other program regulations. However, due to the variance in the number of recipient agencies among States and the amount of donated foods which are being made available for each site, the frequency for conducting reviews of recipient agencies has not been established. To assist FNS in establishing in the final rule review requirements for recipient agencies, comments are requested. Comments should provide specific information regarding the number of recipient agencies by type in the State and the frequency of reviews which should be required.

In an effort to ensure that recipient agencies are receiving the value of the donated food contained in an end product, the Department is proposing in § 250.19(c)(2) to require distributing agencies to design and implement a system to verify sales in instances when a processor transfers end products to a distributor and the distributor sells the end products to recipient agencies at a discount in accordance with § 250.30(e). The Department is not proposing to require sales verification in instances when end products are sold under a refund system because sales information is submitted to the processor as well as

the contracting agency as part of the refund application and reviewed on an ongoing basis.

Distributing agencies will be responsible for reviewing on a quarterly basis the sales information for all processors which contract with contracting agencies within that State, including multi-State processors. In instances when deficiencies have been identified, the distributing agency shall pursue claims in accordance with FNS Instruction 410-1, non-Audit Claims, Food Distribution Program.

The verification must consist of the review of a statistically valid sample of the sales in each quarter to determine if the value of the donated foods has been properly passed on and that the end products have been properly distributed. The verification must be statistically valid so as to support the projection of a claim against a processor based on the review of the sample.

Distributing agencies may delegate the responsibility for sales verification to the processor. In such cases, the distributing agency must establish guidelines which the processor must follow in conducting sales verification. These guidelines must ensure that a statistically valid sample of sales is verified quarterly. Processors will be required to report their findings to the distributing agency on a quarterly basis as an attachment to the September, December, March and June performance reports which are required under § 250.30(m) of the proposed rule. The report is to be submitted in any format the distributing agency desires. The distributing agency must review the processor's sales verification system and the processor's findings for adequacy.

FNSRO's are encouraged to conduct annual management evaluation reviews of State processing systems. In addition, FNS will also conduct periodic reviews of FNSRO processing activities.

Nondiscrimination

Section 250.13(d) of the current regulations states that distributing agencies and recipients agencies are subject to the Department's regulations effectuating Title VI of the Civil Rights Act of 1964 (7 CFR Part 15), which prohibit discrimination on the grounds of race, color, or national origin. FNS proposed in the Prenotice to expand the regulations to include specific criteria relative to public notification, compliance reviews, data collection, and proper complaint handling. Eight comments were received concerning the proposed expansion. Three commenters concurred with the proposal. Other commenters did not agree with the proposed expansion, reasoning that the FNS Title VI Civil Rights Instruction for the Food Distribution Program is adequate to provide details and thus an expansion is unnecessary.

Section 250.21 of the proposed rule has been reserved. This section will be expanded to state the applicable prohibitions against discrimination on the grounds of age, sex, or handicap in accordance with Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. The regulations stating these prohibitions and containing provisions to ensure compliance are being developed for clearance separately for incorporation at a later date.

State Processing of Donated Foods

State Processing Program—Under § 250.15 of the current regulations, distributing agencies, subdistributing agencies and recipient agencies are permitted to enter into contracts for the processing of donated foods into various end products. In addition, for a two-year period, FNS entered directly into contracts for the processing of bonus dairy commodities under the National Commodity Processing (NCP) System. During the time the NCP System has operated, many State agencies discontinued all State processing agreements involving bonus dairy commodities, believing them to be duplicative of NCP efforts. FNS did publish a **Federal Register** Notice terminating NCP effective June 30, 1985. However, a one year extension of this program is contained in the Fiscal Year 1985 Supplemental Appropriations Bill for the Department of Agriculture. That bill is presently awaiting the President's signature.

However, in the past some recipient agencies have been unable to receive the benefit of end products from the processing of bonus commodities because distributing agencies have restricted the number as well as the types of recipient included under State processing contracts. In addition, some processors have been unable to participate in State processing activities due to the manner in which processing contracts have been granted. Thus, in an effort to ensure that recipient agencies receive the benefit of processed end products and that processors are treated on an equitable basis, the Department is proposing in § 250.30(a) to require distributing agencies to develop and implement a State processing program for bonus commodities.

At a minimum, a distributing agency must enter into a processing contract for a given end product containing a bonus commodity whenever a processor can prove the marketability of an end product which contains at least one truckload lot of a single bonus commodity. A processor must prove the marketability of an end product in the form of recipient agencies' written intent to purchase the end product or on the basis of past sales of the end product to recipient agencies under the distributing agency's authority.

Distributing agencies will enter such contracts on behalf of all eligible recipient agencies and provide the processor with a list of such agencies. In addition to those processing contracts which the distributing agency is required to enter into, distributing agencies must permit subdistributing agencies and recipient agencies to directly enter into processing contracts.

A distributing agency's eligibility to receive donated foods which are in addition to the State's authorized level of assistance (bonus commodities) will be contingent upon the operation of such a processing program. Distributing agencies are encouraged to operate a processing program for donated foods which are provided as part of the State's authorized level of assistance.

Distributing agencies must comply with the contracting procedures set forth in § 250.30(c), monitor all processing activities within the State, and approve all processing contracts.

If there is more than one distributing agency within a State, each distributing agency within the State may assume the responsibility for the administration of the processing program for their respective recipient agencies. However, at least one distributing agency must assume the responsibility for the administration of the program. The administering distributing agency must ensure that all eligible recipient agencies are permitted to participate in the program.

To defray costs associated with the processing of donated foods for use in Child Nutrition Programs, distributing agencies are eligible to receive State administrative expense (SAE) funds in accordance with Part 235, State Administrative Expense Funds Regulations. The Department is proposing, under separate rulemaking, to revise the allocation to assist distributing agencies in the establishment or expansion of State commodity processing programs.

FNS will be gathering information for dissemination to distributing agencies for use in developing "Model" processing systems.

Contract Value of Donated Foods—In § 250.3 of the proposed regulations the

term "contract value of donated foods" has been redefined to mean the price assigned by the Department which reflects the Department's costs for acquiring and delivering the donated foods to be processed as well as any processing costs related to the food. The alternate choice of using the processor's most recent documented purchase price of the same or better quality product has been eliminated. The elimination of this provision is the result of audit findings where evidence was provided that some processors could not demonstrate on an ongoing basis, commercial purchases of an identical product of equivalent quality and at a lower price than the Department's.

State Plan of Operations—In accordance with the intent of Executive Order 12372 to simplify and consolidate State Plan requirements, the provisions in §§ 250.6(w) and 250.15(b) of the current regulations relative to the development and submission of a State Plan of Operations for Processing have been eliminated in the proposed rule.

Processing Contracts—Section 250.15(d) of the current regulations requires that processing contracts be in a standard written form approved by FNSRO and terminate no later than one year after they have been approved. However, the contract may be renewed for one year by mutual agreement of all parties and upon written approval by the distributing agency.

Section 250.30(c)(1) of the proposed rule would require that processing contracts be in a standard written form and reviewed by FNSRO. The intent of the current regulations was to provide FNSRO the opportunity to review the contracts to ensure compliance with regulatory provisions. However, requiring approval of such contracts might cause some to argue that FNS is a party to the contract. In order to remedy any uncertainty, the proposed rule would require only "review" by the FNSRO.

The current regulations do not set forth procedures under which processing contracts are to be granted. In order to ensure that processors are given equitable treatment in the granting of contracts and to facilitate the implementation of the new processing requirements, the Department is proposing in § 250.30(c) to require contracting agencies to either enter into contracts with all processors which can demonstrate marketability of end products containing bonus foods, in accordance with § 250.30(a), or in instances when the contracting agency wishes to limit the number of processing contracts, the contracting agency must utilize competitive bidding procedures. When the contracting agency chooses to utilize competitive bidding procedures, the contracting agency is required to solicit bids for any items or lines of items when a processor has demonstrated such proof of marketability.

Distributing agencies must select one of these methods of contracting for all contracts entered into for each school year. Although subdistributing agencies and recipient agencies are not required to enter into processing contracts, when such agencies choose to engage in such processing activities, they must also select one of these contracting methods for all contracts entered into for each school year.

This section also contains minimum standards to be followed by all contracting agencies when competitive bidding is used. The competitive bidding procedures require contracting agencies to select the lowest qualified bid, i.e., the lowest end product price including any refund or discount. The lowest bid may not be acceptable due to such things as the quality or the acceptability of the product. In instances when the lowest bid is not accepted, the bid must be submitted to the FNSRO or to the distributing agency when the contracting agency is a subdistributing agency or recipient agency for review. A written justification stating why the lowest bid was not acceptable, must also be submitted.

In addition, this section also sets forth the following minimum criteria which a processor must meet prior to entering into a processing contract with a contracting agency: (1) The ability to meet the terms and conditions of the regulations and the distributing agency agreement; (2) The ability to furnish prior to the delivery of any donated foods for processing, a performance bond, an irrevocable letter of credit in an amount acceptable to the distributing agency or an escrow account in an amount acceptable to the distributing agency; (3) The ability to distribute end products to eligible recipient agencies; (4) a satisfactory record of integrity, business ethics and performance; and (5) The ability to accept and provide storage for at least one truckload lot of a single commodity item. Meeting these minimum requirements will demonstrate the ability of a processor to meet administrative and financial program obligations.

All processing contracts must terminate within one year of the date on which they were entered into.

Section 250.15(d) of the current regulations requires that a processing contract contain a description of each end product to be processed and the quantity of each donated food and any other ingredient which is needed to yield a specific number of each end product, except that distributing, subdistributing or recipient agencies may permit processors to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of seasonings or flavorings.

Section 250.30(c)(4) of the proposed rule contains the additional requirement of a 100 percent yield factor requirement for all substitutable donated foods. The Department published a final rule implementing this provision in the **Federal Register** on May 15, 1985 (50 FR 20197). Language contained in the final rule is contained in this proposed rule for the sake of clarity only. The Department is not reopening the comment period by including this language.

To further ensure that processors participating in the program do not receive unjust enrichment, § 250.30(c)(4) of the proposed rule also requires the processing contract to contain language which requires that drawdowns on inventory be limited to the actual amount of donated foods contained in the end product. Additional commodity required to account for production loss must be obtained from non-donated foods.

Proposed § 250.30(c)(4) also permits distributing agencies to waive the requirement that processors list ingredients other than donated foods in end products upon the submission of a written request and justification by the processor. This change is being made to provide the distributing agency with more flexibility in negotiating processing agreements.

Section 250.15(d) of the current regulations permits the contracting agency to require a performance supply and surety bond, an irrevocable letter of credit payable in an amount acceptable to the distributing agency, an escrow account in an amount acceptable to the distributing agency or any other means of protecting itself. Since, in many instances, it has been difficult to recoup losses due to the fact that processors have not been required to protect the value of the donated foods, § 250.30(c)(4) of the proposed rule has been revised to require as a condition of the processing contract that processors furnish to the contracting agency documentation that one of the instruments specifically described above, has been obtained and that the instrument at a minimum, is sufficient to protect the contract value of all donated food inventory on hand and

on order. In addition, performance supply and surety bonds must be obtained from a surety company listed in the current U.S. Department of Treasury Circular 570.

In addition, § 250.30(c)(4) includes the new provision that each processing contract contain a provision requiring that the processor submit annual reconciliation reports and make payments to the distributing agency for all outstanding refund applications and excessive inventories in accordance with § 250.30(n)(2). Section 250.30(n)(2) requires that the annual reconciliation report be made no later than 90 days after the end of the year to which the contract pertains.

As a part of the reconciliation, the processor must pay the distributing agency for the contract value of any donated foods for which a refund application has not been submitted in accordance with paragraph (k) of this section and for inventories in excess of a six-month supply. In instances when the distributing agency has assigned an inventory level other than a six-month level, the processor shall pay the contract value of donated foods which are in excess of that level.

The details of the reconciliation relative to the submission of refund applications for end products delivered during the last month of the contract period are left up to the distributing agency. Distributing agencies are being afforded this discretion in an effort to eliminate any undue burden on the contracting agency or the processor. However, in order to ensure that recipient agencies and distributors receive prompt payment for refund applications which have been submitted in a timely manner, § 250.30(k) (1) and (2) requires that contracting agencies and distributing agencies forward refund applications within 10 days of receipt. Thus, the maximum time between the purchase of an end product and payment of the refund by the processor is 90 days.

These provisions are necessary to fully implement the new requirements for the submission of timely refund applications (§ 250.30(k)) and inventory controls (§ 250.30(n)(1)). The requirement that processors pay the distributing agency for unpaid refunds prevent processors from enjoying unjust enrichment when refunds are not submitted to them in accordance with paragraph (k) of this section. Requiring the processor to pay the distributing agency for excessive inventories will aid the distributing agency and processor in monitoring the processor's donated food inventories and in enforcing the inventory controls. Furthermore, it will allow distributing agencies to be more competitive in their contract negotiations. Distributing agencies will no longer have incentives to renew contracts with processors just because the processor has excessive inventories for which the distributing agency is ultimately responsible. By requiring the processor to pay for excessive inventories, the distributing agency's responsibility is limited to a six-month supply or the otherwise authorized level. Processors will no longer have access to donated food inventories as interest-free loans for use in their commercial food processing activities long after the end of the contract period. Section 250.30(n)(4) also provides that distributing agencies shall not submit donated food requisitions for those processors showing no activity during the prior year's contract period and having no specific plans for product promotion or sales expansion.

This section has also been revised to require a provision in the processing contract which describe the company's quality control system and assurance that such system will be maintained for the duration of the contract. The Department believes this provision is necessary to further ensure proper handling and accountability of donated foods.

This section has also been revised to require that processing contracts contain the following: (1) The annual CPA audit requirement for multi-State processors, as described in § 250.18(c); (2) the provision that inventory drawdowns be limited to the actual amount of donated foods contained in the end product in accordance with § 250.30(c)(4); (3) a description of the system under which end products are to be sold to recipient agencies as described in § 250.30(e); and (4) assurance that sales to recipient agencies will be verified in accordance with § 250.19(c)(2).

Sale of End Products by a Distributor—Section 250.15(f) of the current regulations requires that the sale and delivery of end products to recipient agencies by a distributor be done under a refund system unless the distributing agency receives FNSRO written concurrence to permit the use of any other system.

This requirement is revised in § 250.30(e) of the proposed regulations to permit the use of either a refund system or a system under which end products are sold to recipient agencies at a discount and distributors are provided a refund by the processors. This will provide distributing agencies with more flexibility in administering the processing program.

Substitution of Donated Foods With Commercial Foods—Section 250.15(g) of the current regulations permits distributing agencies to allow processors to substitute specific types of donated foods with commercial foods of the same generic identity and of equal or better quality.

The Department never intended to permit processors to substitute commercial foods for donated foods for any reason other than when such substitution was needed to produce end products and without substitution such production could not be accomplished. OIG audit reports have demonstrated that processors are obtaining blanket approval to substitute when contracts are signed. Section 250.30(f) of the proposed rule has been revised to require that distributing agencies monitor the substitution of donated foods and ensure that substitution is being made only in instances in which it is warranted. Such assurance may be provided by requiring processors to request approval prior to the actual substitution of any item.

Meat and Poultry Inspection Programs—Section 250.15(f) of the current regulations requires that whenever the value of the donated meat or poultry items to be processed under any contract at any one time is $10,000 or more, the processing must be performed under Food Safety and Quality Service (FSQS) acceptance service grading. The current regulations permit the distributing agency to waive this requirement in the event that an FSQS inspector is not available or when a school food authority needs product produced on short notice.

There has been a great deal of confusion over the definition of a processing run and the arbitrary $10,000 limit for requiring acceptance service grading. In addition, many distributing agencies have been indiscriminately waiving the requirement without attempting to obtain such service. Thus, § 250.30(g) of the proposed rule requires acceptance service grading for all meat and poultry processing. The reference to FSQS has been revised to Agricultural Marketing Service (AMS) to reflect the reorganization of functions within the Department.

Performance Reports—Section 250.15(n) of the current regulations sets forth the information which is required to be submitted by processors to distributing agencies regarding the receipt and distribution of donated foods. Section 250.30(m)(1) has been expanded to require processors to report the number of pounds of each donated food represented in sales to distributors

but not delivered to eligible recipient agencies. This provision will provide a clear audit trail for use in monitoring processor inventories. This section has also been expanded to identify all contracting agencies and their locations with which they have entered into processing contracts. In addition, § 250.30(o) requires distributing agencies to submit this information on the processing inventory reports to the FNSRO. The FNSRO will report this data to FNS. This reporting is necessary to enable FNS to identify multi-State sponsors and to ensure that they are properly monitored.

This section has also been expanded to require processors which are responsible for sales verification in accordance with § 250.19(c)(2) to submit sales verification information as part of their September, December, March and June performance reports.

Finally, this section has also been expanded to require that processors submit as part of the performance report a statement certifying that adequate inventories of donated foods are on hand or on order for production of end products to meet the requirements of the State processing contracts and that adequate commerical foods are maintained for the production of products sold commercially. This provision has been added as a result of audit findings which substantiate that some processors have used donated foods for long periods of time in their commercial operations to avoid purchase of foods needed to maintain their commercial production.

Processing Activity Guidance—Section 250.15(t) of the current regulations requires distributing agencies to develop and provide a processing manual or similar procedural material for guidance to contracting agencies, recipient agencies, and processors within 60 days of the annual agreement approval.

In an effort to provide distributing agencies with more flexibility in developing guidance material for use by contracting agencies, recipient agencies and processors, § 250.30(s) of the proposed rule requires that the guidance material be made available only at the time of the initial contract approval, when there have been regulatory or policy changes which necessitate changes in the guidance materials, and upon request. Thus these materials will not have to be repeatedly provided at each contract renewal when there have been no changes to the materials.

Charitable Institutions

Under Section 416 of the Agricultural Act of 1949, as amended, charitable institutions are eligible to receive commodities to the extent that they serve needy persons.

Section 250.6(d) of the current regulations requires distributing agencies to submit a description of the method or methods used to determine the number of needy persons in charitable institutions for FNS approval. Such methods may include, but are not limited to, those which identify the number of persons who do not pay the full charge assessed for the services provided to them or who are unable to pay the full cost of providing such services.

Section 250.41 of the proposed rule revises the current rule to establish a uniform means of determining the needy population of charitable institutions. In order to eliminate the varying and often unreliable methods for determining the number of needy persons in a charitable institution the proposed regulations require the distributing agency to determine the number of needy persons being served by: (1) Determining the percentage of subsidized income by dividing the subsidized income by the total subsidized and nonsubsidized income; and (2) multiplying that percentage by the average daily number of participants. For the purpose of this section "subsidized income" shall mean income from public tax funds which are provided on behalf of participants that have been determined to be in need of financial assistance through a means-tested program such as Medicaid or income received through private federally tax-exempt contributions which are provided for the care of participants which the institution has determined to be in need of financial assistance. "Nonsubsidized income" shall mean all other income, including payments made by institutional participants for services received and payments made on behalf of participants by persons legally responsible for their support. At a minimum, any time the number of participants in an institution or the amount of income increases or decreases by ten percent, the institution must notify the distributing agency. The distributing agency will revise financial and participation data to reflect such changes. The Department believes that this minimum requirement for reporting changes in the population or income of an institution is necessary as it may affect the level of assistance which the charitable institution is eligible to receive. Due to the diversity inherent in the operation of charitable institutions, distributing agencies may decide to require charitable institutions to report changes even when they are below ten percent.

The income and average daily participation figures reflected in the agreement shall be used in determining the number of needy persons being served by the institution in accordance with the above formula. These figures will be based on the institutions' financial and participation data for the previous year.

This formula, which is already widely used by distributing agencies, provides a highly accurate indicator of the need for food assistance within an institution.

In addition, the definition of "charitable institution" has been revised to specify that a charitable institution must not only be nonprofit but must operate a nonprofit meal service. The Department has always considered this provision inherent in the definition of such institutions. However, it has come to our attention that some questions have been raised regarding the status of the meal service.

Correctional Institutions

Five comments were received concerning the inclusion of the eligibility criteria for adult correctional institutions which are currently contained in FNS (FD) Instruction 706–3, *Eligibility of Adult Correctional Institutions in the Food Distribution Program in Part 250.* Three commenters recommended that the eligibility criteria be included. Two commenters recommended that the requirement relative to rehabilitative activities be deleted from the instruction. In the absence of express legislative authority for USDA food donations to nonfederal adult correctional institutions, the Department determined that such institutions which carry on programs of rehabilitation for their inmates may be classified as "charitable institutions" within the intent of section 416 of the Agricultural Act of 1949, as amended, even though the definition of that term in these regulations indicates that such outlets must be "nonpenal" in character. In order to distinguish between eligible correctional institutions and ineligible penal institutions, § 250.41(a)(3) of this proposed rule includes the eligibility policy set forth in FNS Instruction 706–3.

Accordingly, in order to receive donated foods, adult correctional facilities must conduct rehabilitation programs which are (1) available to a majority of inmates and (2) of sufficient scope to permit participation (for a minimum of 10 hours per week per inmate) by either a majority of the total inmate population or a majority of sentenced inmates.

In addition, § 250.8(f) of the current regulations permits the distribution of donated foods to State correctional institutions for minors in accordance with section 210 of the Agricultural Act of 1956. However, section 9(c) of Pub. L. 94–105 amended section 12(d) of the National School Lunch Act to define "school" in such a way as to include State correctional institutions for minors. Participation in the Food Distribution Program as a school makes such institutions eligible for a much broader array of food items than would be offered to them under section 210. Thus, reference to the institutions' eligibility under section 210 has been eliminated in the proposed rule.

Section 210 also authorizes the distribution of donated foods to federal penal institutions. Since donated foods are provided by the Commodity Credit Corporation to such institutions directly under a Memorandum of Understanding between the Department of Agriculture and the Department of Justice, these institutions are not covered by Part 250.

Nutrition Programs for the Elderly

Section 250.4(b)[4] of the current regulations provides that the total quantity of donated foods to be made available to any State to meet statutory levels of donations in nutrition programs for the elderly (NPE's), in accordance with section 311 of the Older Americans Act of 1965, is established on the basis of the number of meals that the State Agency on Aging reports as having been served, or where necessary, estimates will be served within the State during the year. This section also contains the provision that the amount of food donations to be received by any State for NPE's shall be reduced to the extent that the State elects to receive cash payments in lieu of donated foods it would otherwise receive.

Donated-food procurement and delivery for the few NPE's electing to receive commodities are made in conjunction with those for school lunch programs. Since the procurement and delivery period for schools is generally completed before FNS receives third and fourth quarterly NPE meal reports, FNS has had to rely on preliminary meal estimates, which may be revised numerous times. As a result, there have been some overallocations or underallocations of foods.

In order to alleviate this problem, § 250.42 of the proposed regulations specifies that no adjustments in commodity allocations will be made on the basis of meal reports or estimates received after the close of the third Federal fiscal quarter of the year to which they pertain.

Section 310(3) of Pub. L. 98–459 amended section 311(c) of the Older Americans Act of 1965 to provide that no State may receive cash-in-lieu of commodities payments unless the State submits its final reimbursement claims for meals within 90 days after the last day of the quarter. Accordingly, this requirement has been included in § 250.42(c)(4) of the proposed rule.

Emergency Food Assistance

Section 250.8(e) of the current regulations authorizes the distribution of donated foods to disaster victims by disaster organizations for the duration of the disaster as determined by the Secretary. In situations of distress in which the need for food assistance cannot be provided under these or other provisions of this part, § 250.10 authorizes the distributing agency, upon approval by the Secretary, to make donated foods available to disaster organizations for use in special group feeding programs on a temporary basis.

Sections 250.43 and 250.44 of the proposed rule expand the current regulation to clarify the responsibilities of the distributing agency and the disaster organizations in the use of donated foods during a major disaster, emergency or other situations of distress.

Section 250.43 describes the procedures for obtaining donated foods in instances when the Secretary has determined that a major disaster or emergency exists. This section also revises the procedures set forth in FNS Instruction 708–2 regarding household distribution on Indian reservations in cases of a major disaster or emergency. Under the instruction, Indian reservations may receive donated foods for household distribution in any instance of major disaster or emergency. Under § 250.43(c) of the proposed rule, Indian reservations will have to meet the same criteria as those set forth for other jurisdictions where the Food Stamp Program is in operation before receiving donated foods for household distribution. FNS Instruction 708–2 will be revised accordingly. This change does not alter the ability of Indian Tribal Organizations to receive both commodities and food stamps pursuant to 7 CFR Part 253.

Section 250.44 describes the procedures for obtaining donated foods in situations of distress in which the need for food assistance cannot be met under other provisions of Part 250. Donations under this section may only be made for special group food assistance. The current rule has been modified by § 250.44(a) to limit the distribution period to no longer than 30 days and to require that such assistance be targeted to groups which are predominately composed of needy persons.

Offer-and-Acceptance System

In accordance with section 6 of the National School Lunch Act, as amended, § 250.4(h) of the current regulations permits any school food authority which is participating under the National School Lunch Act to refuse up to 20 percent of the value of donated foods which cannot be used effectively and receive, in lieu of the refused commodities, other commodities to the exent that they are available.

Section 250.48(e)(2) of the proposed rule prohibits refusal of donated foods in instances when an offer-and-acceptance system is being maintained. Use of the offer-and-acceptance system permits school food authorities to order only the amounts and varieties of donated foods it desires for the school lunch program on the basis of advance notification by the distributing agency. Thus, the refusal provision is not warranted in instances when a offer-and-acceptance system is being maintained.

Special Supplemental Food Program for Women, Infants and Children (WIC Program)

State agencies which administer the WIC Program are eligible to receive donated foods from the Department. Section 250.51 of the proposed rule outlines the procedures by which State agencies may request the donated food for distribution to WIC Program participants. Those donated foods which are included in the WIC food package must be paid for by the State agencies with funds allocated to the State for the WIC Program. Donated foods which are provided to participants in addition to the quantities authorized for the food package are made available to the State agency free to charge.

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Chapter II would be amended by revising Part 250 to read as follows:

SUBCHAPTER B—GENERAL REGULATIONS AND POLICIES—FOOD DISTRIBUTION

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

Subpart A—General

Subpart B—General Operating Provisions

Subpart C—Processing and Labeling of Donated Foods

Subpart D—Eligible Recipient Agencies and Programs

Subpart E—Where to Obtain Information

Authority: Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, Pub. L. 79–396, 60 Stat. 231, 233 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 81–665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210 Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9 Pub. L. 85–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304, Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); (5 U.S.C. 301); sec. 1114(a), Pub. L. 97–98, 95 Stat. 1269 (7 U.S.C. 1431e); Title II, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note).

Subpart A—General

§ 250.1 General purpose and scope.

This part prescribes the terms and conditions under which donated foods may be obtained from the Department by Federal, State and private agencies for use in any State in child nutrition programs, nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, the Commodity Supplemental Food Program, the Special Supplemental Food Program for Women, Infants, and Children, and the assistance of needy persons.

§ 250.2 Administration.

(a) *Delegation to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of the program. FNS will provide assistance to distributing agencies and evaluate all levels of program operations to assure that the goals of the program are achieved in the most effective and efficient manner possible.

(b) *Delegation to distributing agency.* The distributing agency is responsible for effective and efficient administration of program operations within its jurisdiction and shall administer the program in accordance with the requirements of this part and FNS guidelines and instructions. Distributing agencies may impose additional requirements for participation that are not inconsistent with the provisions of this part, except that this provision shall not apply to distribution to households on all or part of an Indian reservation which is participating in the Food Distribution Program under Part 253 of this chapter. The distributing agency shall provide guidance to subdistributing and recipient agencies on all aspects of program operations.

(c) *Personnel.* Adequate personnel, including supervisory personnel, shall be provided to review distribution programs and to effect distribution in accordance with the requirements of this part.

§ 250.3 Definitions.

"Charitable institution" means (a) a nonpenal, noneducational public (Federal, State or local) institution, (b) a nonprofit, tax-exempt, private hospital, or (c) any other nonprofit, noneducational, tax-exempt, private institution organized to provide charitable or public welfare services in the same place without marked changes and, at the Department's option, approved by a public welfare agency as meeting a definite need in the community by administering to needy persons, and provides a nonprofit meal service on a regular basis. Charitable institutions include any institution defined as "service institution;" "nonresidential child care institution;" or "school" which is not a commodity school or does not participate in a child nutrition program. For purposes of this paragraph, tax-exempt shall mean exempt from income tax under the Internal Revenue Code, as amended, and a charitable institution shall be considered "noneducational" even though educational courses are given, where such courses are an incident to the primary purpose of the charitable institution.

"Child nutrition program" means the National School Lunch Program, the School Breakfast Program, the Summer Food Service Program for Children, or the Child Care Food Program. (Parts 210, 220, 225, and 226 respectively of this chapter).

"Commodities" means foods donated, or available for donation, by the Department under any of the legislation referred to in this part (see "Donated Foods").

"Commodity school" means a school that does not participate in the National School Lunch Program under Part 210 of this chapter but which operates a nonprofit school food service under agreement with the State agency or FNSRO as provided for under Part 210 of this chapter and receives donated foods, or donated foods and cash or services of a value of up to 5 cents per lunch in lieu of donated foods under Part 240 of this chapter for processing and handling of the donated foods.

"Contract value of donated foods" means the price assigned by the Department to a donated food which shall reflect the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

"Contracting agency" means the distributing agency, subdistributing agency, or recipient agency which enters into a processing contract.

"Department" means the United States Department of Agriculture or the Commodity Credit Corporation, whichever is donor under the pertinent legislation.

"Disaster organizations" means organizations authorized by appropriate Federal or State officials to assist disaster victims.

"Disaster victims" means persons who, because of Act of God or manmade disasters, are in need of food assistance, whether or not they are victims of a major disaster or an emergency as defined in this section.

"Discount system" means a system whereby a recipient agency purchases end products directly from a processor at an established wholesale price minus the contract value of donated foods contained in the end products.

"Distributing agency" means a State, Federal or private agency which enters into an agreement with the Department for the distribution of donated foods to eligible recipient agencies and recipients and the Food and Nutrition Service of the Department when it accepts title to commodities from the Commodity Credit Corporation (CCC) for distribution to eligible recipient agencies pursuant to the National Commodity Processing System. A distributing agency may also be a recipient agency.

"Distributor" means a commercial food purveyor or handler who is independent of a processor and both sells and bills for the end products delivered to recipient agencies.

"Donated foods" means foods donated, or available for donation, by the Department under any of the legislation referred to in this part (see "Commodities").

"Emergency" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United State which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, health, and safety or to avert or lessen the threat of a disaster.

"End product" means a product containing any amount of donated foods which have been processed.

"Federal acceptance service" means the acceptance service provided by (a) the applicable grading branches of the Department's Food Safety and Inspection Service (FSIS), (b) the Department's Federal Grain Inspection Service, (c) the Department's Agricultural Marketing Service and (d) the National Marine Fisheries Service of the U.S. Department of Commerce.

"Fiscal year" means the period of 12 months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

"FNS" means the Food and Nutrition Service of the Department of Agriculture.

"FNSRO" means the appropriate Food and Nutrition Service Regional Office of the Food and Nutrition Service of the Department of Agriculture.

"Food service managment company" means a commercial enterprise or a nonprofit organization which is or may be contracted with by a recipient agency to manage any aspect of its food service in accordance with § 250.12(c) or in accordance with Parts 210, 220, 225 or 226 of this chapter.

"Household" means a group of related or non-related individuals, exclusive of boarders, who are not residents of an institution, but who are living as one economic unit and for whom food is customarily purchased and prepared in common. It also means a single individual, living alone.

"In-kind replacement" means replacement of lost donated foods with a like quantity of the same foods of U.S. origin that are of equal or better quality than the lost foods and that are of at least equal monetary value to the Department's cost of replacing the lost foods.

"Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Disaster Relief Act of 1974 (42 U.S.C. 5121), above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. (This definition is taken from the Disaster Relief Act of 1974.)

"Multi-State processor" means a processor which has entered into a processing contract with contracting agencies in more than one State or a processor which has entered into a processing contract with one or more contracting agencies located in a State other than the one in which the processor is located.

"Needy persons" means (a) persons provided service by charitable institutions, who, because of their economic status, are in need of food assistance, (b) all the members of a household who are certified as in need of food assistance, and (c) disaster victims.

"Nonprofit meal service" means all food service operations conducted by a charitable institution or nonprofit summer camp for children principally for the benefit of the individuals served by those entities, all of the revenue from which is used solely for the operation or improvement of such food service.

"Nonprofit school food service" means all food service operations conducted by the school food authority principally for the benefit of school children all of the revenue from which is used solely for the operation or improvement of such food service.

"Nonprofit summer camps for children" means nonprofit camps which do not participate in the Summer Food Service Program for Children authorized under section 13 of the National School Lunch Act, as amended (42 U.S.C. 1761), and in which, during the months of May through September, nonprofit meal services are conducted for children of high school grade and under.

"Nonresidential child care institution" means any child care center, day care home, or sponsoring organization (as those items are defined in Part 226 of this chapter), which participates in the Child Care Food Program authorized under section 17 of the National School Lunch Act, as amended (42 U.S.C. 1766).

"Nutrition program for the elderly" means a project conducted by recipient of a grant or contract under Title III or Title IV of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a).

"Offer-and-acceptance system" means a procedure whereby a school food authority is given the opportunity to order only the amount and varieties of donated foods it desires for its school lunch program on the basis of advance notification by the distributing agency.

"Performance supply and surety bond" means a written instrument issued by a surety company which guarantees performance and supply of end products by a processor under the terms of a processing contract.

"Processing" means (a) the conversion of a donated food or donated foods into a different end product or (b) the repackaging of a donated food or donated foods.

"Processing fee" means the amount charged to a contracting agency for a processor's services.

"Processor" means a commercial facility, other than a food service management company, which processes donated foods.

"Programs" means the Food Distribution Program.

"Recipients" means needy persons receiving commodities for household consumption.

"Recipient agencies" means nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, disaster organizations, school food authorities, schools, nonresidential child care institutions, service institutions, and welfare agencies, receiving foods for their own use or for distribution to eligible recipients.

"Refund application" means an application by a recipient agency in any form acceptable to a distributing agency and processor which certifies purchase of end products and which, upon forwarding to the processor by the distributing agency, obligates the processor to refund the contract value of the donated foods contained in the end products.

"Refund system" means a system whereby a recipient agency purchases a processor's end products and receives from the processor a payment equivalent to the contract value of the donated foods contained in the end products.

"School" means (a) an educational unit of high school grade or under except for a private school with an average yearly tuition exceeding $1,500 per child, operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade; (b) with the exception of residential summer camps which are eligible to participate in the Summer Food Service Program for Children, Job Corps Centers funded by the Department of Labor, and private foster homes, any distinct part of a public or nonprofit private institution or any public or nonprofit private child care institution, which (1) maintains children in residence, (2) operates principally for the care of children, and (3) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institutions" includes, but is not limited to, homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; half-way houses; orphanages; temporary shelters for abused children and for runaway children; long term care hospitals for chronically ill children; and juvenile detention centers; and (c) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

"School food authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a nonprofit school food service.

"School year" means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.

"Secretary" means the Secretary of Agriculture.

"Section 4(a)" means section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note). Section 4(a) authorizes the purchase of foods for distribution to maintain the traditional level of assistance for food assistance programs as are authorized by law, including institutions, supplemental feeding programs, disaster areas, summer camps for children, the Trust Territory of the Pacific Islands, and Indians whenever a tribal organization requests distribution of federally-donated foods under section 4(b) of the Food Stamp Act of 1977.

"Section 6" means section 6 of the national School Lunch Act, as amended (42 U.S.C. 1755). Section 6 authorizes the purchase of foods for distribution to schools and institutions participating in child nutrition programs under the National School Lunch Act and specifies the level of assistance which is to be provided.

"Section 14" means section 14 of the National School Lunch Act, as amended (42 U.S.C. 1762a). Section 14 authorizes the purchase of foods for distribution to maintain the annually programmed level of assistance for programs carried on under the National School Lunch Act, the Child Nutrition Act of 1966, and Title III of the Older Americans Act of 1965.

"Section 32" means section 32 of Public Law 74-320, as amended (7 U.S.C. 612c). Section 32 authorizes the Department to purchase nonbasic perishable foods available under surplus-removal operations, for the purpose of encouraging the domestic consumption of such foods by diverting them from the normal channels of trade or commerce.

"Section 311" means section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a). Section 311 authorizes the purchase of commodities for nutrition programs for the elderly.

"Section 416" means section 416 of the Agricultural Act of 1949, as amended (7 U.S.C. 1431). Section 416 authorizes the Department to donate basic nonperishable foods acquired through Federal price-support operations for use by needy persons, for use in nonprofit school lunch programs and nonprofit summer camps for children, and for use in charitable institutions to the extent that needy persons are served.

"Section 709" means section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a-1). Section 709 authorizes the purchase of adequate supplies of dairy products to meet the requirements of schools, domestic relief distribution, and other programs authorized by law when the stocks of the Commodity Credit Corporation are insufficient to meet those requirements.

"Service institutions" means camps or sponsors (as those terms are defined in Part 225 of this chapter) which participate in the Summer Food Service Program authorized under section 13 of the National School Lunch Act, as amended.

"Similar replacement" means replacement of lost donated foods with a like quantity of similar foods of U.S. origin of the same types as those normally donated by the Department and of at least equal monetary value to the Department's cost of replacing the lost foods. Such replacement shall be subject to the approval of the FNSRO.

"State" and "United States" means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"State Agency on Aging" means (a) the State agency that has been designated by the Governor and approved by the United States Department of Health and Human Service (DHHS) to administer nutrition programs for the elderly under Title III of the Older Americans Act of 1965, as amended or (b) the Indian tribal organization which has been approved by DHHS to administer nutrition programs for the elderly under Title VI of such act.

"Students in home economics" means students in regular classes wherein they are taught general home economics including food prepartion, cooking, serving, nutrition, food purchasing, child care and health.

"Subdistributing agency" means an agency performing one or more distribution functions for a distributing agency other than, or in addition to, functions normally performed by common carriers or warehousemen. A subdistributing agency may also be a recipient agency.

"Tuition" means the basic charge required for a student to matriculate at a school, excluding any amount paid for

the cost of room and board, transportation, books, supplies, equipment, and fees. The following monies shall not be included when calculating a school's average yearly tuition per child: (a) Academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and (b) State, county or local funds provided to schools operating principally for the purpose of educating handicapped or other special needs children for whose education the State, county or local government is primarily or solely responsible. In schools which vary tuition, to determine if the average yearly tuition exceeds $1,500 per child, add the total tuition receipts for the period of time in which the majority of children are in attendance, and divide by the total number of students enrolled during that period.

"Welfare agency" means a public (Federal, State of local) or private agency offering assistance on a charitable or welfare basis to needy persons, who are not residents of an institution, and to Tribal Councils designated by the Bureau of Indian Affairs.

Subpart B—General Operating Provisions

§ 250.10 Eligible distributing and subdistributing agencies.

(a) *State and Federal agencies.* Federal agencies and such State agencies as are designated by Governor of the State, or by the State legislature, and approved by the Secretary are eligible to become distributing agencies.

(b) *Private agencies.* Where distributing agencies are not permitted by law to make distribution to private recipient agencies, or to any class of private recipient agency, private agencies which agree to make distribution of donated foods on a Statewide basis which apply directly to FNS, and are approved by the Secretary are eligible to become distributing agencies.

(c) *Subdistributing agencies.* If distributing agencies use subdistributing agencies to distribute donated foods, the distributing agencies' responsibilities to the Department for overall management and control of the distribution program shall not be delegated to such subdistributing agencies.

§ 250.11 Eligibility determination for recipient agencies and recipients.

Distributing agencies shall determine the eligibility of any agency which submits an application for participation in the program. Once a recipient agency has been determined to be eligible for participation in the program, the distributing agency shall enter into an agreement with the agency in accordance with § 250.12(b) and make donated foods available.

Distributing agencies shall impose upon welfare agencies the responsibility for determining that recipients to whom welfare agencies distribute donated foods are eligible: *Provided, however,* That the State agency or FNSRO administering the applicable program shall determine the eligibility under this part of schools participating under part 210, of sponsors participating in the Summer Food Service Program for Children under Part 225 of this chapter, and of nonresidential child care institutions participating in the Child Care Food Program under Part 225 of this chapter.

§ 250.12 Agreements.

(a) *Agreements with Department.* Prior to the beginning of a distribution program, distributing agencies shall enter into written agreements with the Department which shall incorporate the terms and conditions set forth in this part. When requested by the Department an eligible agency shall present evidence of its authority to enter into such agreements. The agreements shall be effective for no longer than one year and must be completed by September 30 of each year. In addition, agreements between the Department and State Agencies on Aging which elect to receive cash in lieu of commodities shall also be effective for no longer than one year and must be completed by September 30 of each year.

(b) *Distributing agency agreements.* Distributing agencies shall enter into written agreements with subdistributing agencies, recipient agencies, warehouses, carriers, or other entities to which distributing agencies deliver donated foods under their distribution program. All agreements shall contain such terms and conditions as the distributing agency deems necessary to ensure that: (1) The distribution and use of donated foods is in accordance with this part, (2) Subdistributing agencies, recipient agencies, warehouses, carriers, or other persons to whom donated foods are delivered by the distributing agency are responsible to the distributing agency for any improper distribution or use of donated foods or for any loss of, or damage to, donated foods caused by their fault or negligence, (3) Subdistributing agencies and recipient agencies have and preserve a right to assert claims against other persons to whom donated foods are delivered for care, handling or distribution, and (4) Subdistributing agencies and recipient agencies will take action to obtain restitution in connection with claims arising in their favor for improper distribution, use or loss of, or damage to, donated foods. To the extent that bills of lading and warehouse receipts satisfy the above-stated criteria, the distributing agency may consider such documents as appropriate agreements. The agreements shall be effective for no longer than one year.

(c) *Food service management company agreements.* Food service management companies may be employed to conduct the food service operations of nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, schools, nonresidential child care institutions, and service institutions. In instances when a food service management company is employed to provide such services, the recipient agency shall enter into a written contract with the food service management company which shall expressly provide that: (1) Any donated foods received by the recipient agency and made available to the food service management company shall be utilized solely for the purpose of providing benefits for the employing agency's food service operation; and (2) The books and records of the food service management company pertaining to the food service operation of the agency shall be available for a period of three years from the close of the Federal fiscal year to which they pertain. The contracts shall be effective for no longer than one year.

(d) *Storage facility agreements.* When contracting for storage facilities, distributing agencies, subdistributing agencies and recipient agencies shall enter into a written contract for the lease of storage facilities in accordance with § 250.14(c).

(e) *Processing agreements.* When contracting for the processing of donated foods, distributing agencies, subdistributing agencies and recipient agencies shall enter into agreements with processors in accordance with § 250.30(c).

§ 250.13 Distribution and control of donated foods.

(a) *Availability and use of donated foods.* (1) *Availability and use.* Donated foods shall be available only for distribution and use in accordance with the provisions of this part and, with respect to distribution to households on all or part of an Indian reservation, of Part 253 of this chapter. Donated foods

not so distributed or used (for any reason) shall not be sold, exchanged or otherwise disposed of without the approval of the Department. Donated foods which are provided as part of an approved food package or authorized program level of assistance may be transferred between recipient agencies only with prior authorization of the distributing agency and the FNSRO. Donated foods which are provided in addition to the State's authorized program level of assistance may be transferred between recipient agencies with the prior authorization of the distributing agency. The transfer of any donated foods between recipient agencies shall be substantiated by reflecting the transfer on the FNS–155 or FNS–152. In areas where the Food Stamp Program is in effect, there shall be no distribution of donated foods to households under this part except (i) to authorized Indian reservations; (ii) during major disasters or other emergency situations as determined by the Secretary; (iii) for the purpose of the Commodity Supplemental Food Program (7 CFR Part 247); and (iv) at the discretion of the Secretary in accordance with applicable legislative authority.

(2) *Allocations.* As foods become available for donation, FNS shall notify distributing agencies regarding the donated foods, the class or classes of recipient agencies or recipients eligible to receive them, and any special terms and conditions of donation and distribution which attach to a particular donated food in addition to the general terms and conditions set forth herein. Every attempt shall be made to deliver the donated foods in accordance with requested schedules. However, the Department shall not be responsible for delay in delivery or for nondelivery of donated foods due to any cause.

(3) *Minimum donations.* Foods shall be donated only in such quantities as will protect the lower carload freight rate, except as deemed in the best interest of the program as determined by the Department.

(4) *Quantities.* (i) The quantity of donated foods to be made available for donation under this part shall be determined in accordance with the pertinent legislation and the program obligations of the Department, and shall be such as can be effectively distributed to further the objectives of the pertinent legislation.

(ii) Donated foods shall be requested and distributed only in quantities which can be consumed without waste in providing food assistance for persons eligible under this part. Distributing agencies shall impose similar restrictions on recipient agencies.

(5) *Demonstrations and tests.* Notwithstanding any other provision of this part, a quantity of any food donated for use by any recipient agency or recipient may be transferred by the distributing agency or by the recipient agency to bona fide experimental or testing agencies, or for use in workshops, or for demonstrations or tests relating to the utilization of such donated food by the recipient agency or recipient. No such transfer by any recipient agency shall be made without the approval of the appropriate distributing agency.

(b) *Processing and other costs.* The Department shall pay such processing, reprocessing, transporting, handling and other charges accruing up to the time of transfer of title to distributing agencies as is deemed in the best interest of the Department.

(c) *Transfer of title.* Title to donated foods shall pass to distributing agencies upon their acceptance of donated foods at time and place of delivery, limited, however, by the obligation of the distributing agency to use such donated foods for the purposes and upon the terms and conditions set forth in this part.

(d) *Distribution of donated foods to recipient agencies or recipients*—(1) *Distribution.* Donated foods shall be distributed only to recipient agencies and recipients eligible to receive them under this part (see Subpart D). Distributing agencies shall require that welfare agencies and disaster organizations distribute donated foods only to recipients eligible to receive them under this part. It shall not be deemed a failure to comply with the provisions of this part if recipient agencies serve meals containing donated foods to persons other than those who are eligible under this part, when such persons share common preparation, serving or dining facilities with eligible persons (needy persons, children, participants in nutrition programs for the elderly) and at least one of the following is true: (i) Such other persons are common beneficiaries with the eligible persons of the program of the recipient agency, or (ii) such other persons are few in number compared to the eligible persons and receive their meals as an incident of their service to the eligible persons. Such other persons include, but are not limited to teachers, disaster relief workers, and staff members. Nothing in this paragraph shall be construed as authorizing allocation or issuance of donated foods to recipient agencies in greater quantity than that authorized for the assistance of persons eligible under this part.

(2) *Normal food expenditures.* Section 416 donated foods shall not be distributed to any recipient agencies or recipients whose normal food expenditures are reduced because of the receipt of donated foods.

(e) *Improper distribution, loss of or damage to donated foods.* (1) If a distributing agency improperly distributes or uses any donated foods or causes loss of or damage to a donated food through its failure to provide proper storage, care, or handling, the provisions set forth in § 250.15(c) shall apply.

(2) In instances when it is determined by a distributing agency that a claim has arisen in favor of the distributing agency against a subdistributing agency, recipient agency, warehouse, carrier, processor or other person, the distributing agency shall pursue claims in accordance with § 250.15(c).

(f) *Disposition of damaged or out-of-condition foods.* Donated foods which are found to be damaged or out-of-condition and are declared unfit for human consumption by Federal, State, or local health officials, or by other inspection services or persons deemed competent by the Department, shall be disposed of in accordance with instructions of the Department. Such instructions may direct that unfit donated foods be: (1) Sold in a manner prescribed by the Department with the net proceeds thereof remitted to the Department, (2) sold in a manner prescribed by the Department with the proceeds thereof retained for use in accordance with the provisions of § 250.15(f), (3) used in such a manner as will serve a useful purpose as determined by the Department, or (4) destroyed in accordance with applicable sanitation laws and regulations. Upon a finding by the Department that donated foods are unfit for human consumption at the time of delivery to the distributing agency and when the Department or appropriate health officials require that such donated foods be destroyed, the Department may pay to the distributing agency any expenses incurred in connection with such donated foods as determined by the Department. The Department may in any event repossess damaged or out-of-condition donated foods.

(g) *Redonations.* Whenever a distributing agency has any donated food on hand which it cannot efficiently utilize, it shall immediately make a request to the appropriate FNSRO, in writing, for instructions as to the disposition of such donated food. Distributing agencies requesting

authority to make redonation of any donated foods to the Department shall, upon the Department's request, have such donated foods federally inspected. Expenditures incurred by the distributing agency as a result of redonation shall be handled in accordance with § 250.15(e).

(h) *Embezzlement, misuse, theft, or obtainment by fraud of donated foods and donated food-related funds, assets, or property.* Notwithstanding paragraph (c) of this section concerning transfer of title to donated foods, whoever embezzles, willfully misapplies, steals, or obtains by fraud, donated foods or any funds, assets, or property deriving from donated foods or whoever receives, conceals, or retains such donated foods, funds, assets, or property for his/her own use or gain, knowing such donated foods, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall be subject to Federal criminal prosecution under section 12(g) of the National School Lunch Act, as amended, or section 4(c) of the Agriculture and Consumer Protection Act of 1973, as amended. For the purpose of this paragraph "funds, assets, or property" include, but are not limited to funds accruing from the sources identified in § 250.15(f) (1) and (2) donated foods which have been processed into different end products as provided for under Subpart C of this part, and the containers in which donated foods have been received from the Department. Distributing agencies shall immediately notify FNSRO of any suspected violation of section 12(g) or section 4(c) to allow the Department, in conjunction with the U.S. Department of Justice, to determine whether Federal criminal prosecution under section 12(g) or section 4(c) is warranted. Prosecution of violations by the Federal Government shall not relieve any distributing agency of its obligation to obtain recovery for improperly distributed or lost donated foods, as required by § 250.15(c).

§ 250.14 Storage facilities.

(a) *Standards for storage facilities.* Distributing agencies, subdistributing agencies and recipient agencies shall provide facilities for the handling, storage and distribution of donated foods which: (1) Are sanitary and free from rodent, bird, insect, and other animal infestation; (2) can safeguard against theft, spoilage and other loss; (3) can maintain foods at proper storage temperatures; (4) can stock and space foods in a manner so that USDA-donated foods are readily identifiable; (5) use pallets; and (6) take other protective measures as may be necessary. Distributing agencies, subdistributing agencies, and recipient agencies must ensure that storage facilities meet Federal, State or local Health Department standards, whichever are more stringent, prior to entering into a contract for the handling, storage, and distribution of donated foods.

(b) *Reviews.* The distributing agency shall ensure that a review of the storage facilities is conducted prior to entering into or renewing a contract for the handling, storage, and distribution of donated foods to determine if the storage facilities are acceptable in accordance with standards described in paragraph (a) of this section.

(c) *Contracts.* Distributing agencies, subdistributing agencies and recipient agencies responsible for the contracting of storage facilities shall enter into written contracts for the lease of storage facilities. The contract shall, at a minimum, contain the following: (1) Assurance that the storage facilities will be maintained in accordance with the standards specified in paragraph (a) of this section; (2) evidence that donated foods shall be clearly identified; (3) assurance that an inventory system shall be maintained and semiannual physical inventories will be conducted; (4) beginning and ending dates of the contracts; (5) a provision for immediate termination of the contract due to noncompliance on the part of the warehouse management; (6) a provision allowing for termination of the contract upon 30 days written notification; (7) the amount of any insurance coverage which has been purchased to protect the value of food items which are being stored; and (8) express written consent for inspection and inventory by the distributing agency, subdistributing agency, recipient agency, the Comptroller General, the Department, or any of their duly authorized representatives. Such contracts shall be effective for no longer than one year.

(d) *Physical inventory.* Distributing agencies, subdistributing agencies and recipient agencies shall conduct semiannual physical inventories of all storage facilities for which they have contracted or own and are being utilized for the handling, storage, and distribution of donated foods. The physical inventories shall be conducted by June 30 and December 30 of each year. In accordance with § 250.17(b), this information shall be included with the inventory report being submitted to the FNSRO for the months of June and December. Food items which have been lost, stolen, or found to be out-of-condition shall be identified during the physical inventory and reported by the distributing agency to FNS on FNS–155 or other format approved by FNS. Where applicable, the distributing agency shall determine and pursue claims in accordance with § 250.15(c).

(e) *Excessive inventories.* (1) The distributing agency shall determine if inventories are excessive based on inventory information submitted by subdistributing agencies and recipient agencies. The agency shall consider: (i) The rate of distribution; (ii) anticipated distribution; and (iii) other concerns such as logistical and economic considerations. (2) In no case may the inventory level of each donated food in storage exceed six months unless sufficient justification for additional inventory has been submitted and approved. Subdistributing agencies and recipient agencies shall submit sufficient justification for approval by the distributing agency in instances where more than a six-month inventory is needed. Justification shall be submitted by the distributing agency to the FNSRO for approval in instances where more than a six-month inventory is needed at the distributing agency level. (3) The distributing agency shall take corrective action to ensure that excess inventories are eliminated. Further, the distributing agency shall maintain, for FNS evaluation, records of inventory levels and documentation of actions taken to reduce excessive inventories.

§ 250.15 Financial management.

(a) *Distribution charges.* (1) Except as provided in paragraph (a)(2) of this section, recipient agencies may be required to pay part or all of the intrastate costs of distribution through a system of charges assessed by distributing or subdistributing agencies. Any system of assessment operated by the distributing or subdistributing agency shall have the prior approval of and be subject to review by the FNSRO. The charges assessed shall be used solely in accordance with the provisions of paragraph (f) of this section.

(2) For the period May 1, 1983, through September 30, 1985, whenever a commodity is donated to a State without charge or credit against entitlement, recipient agencies may not be assessed for any part of the intrastate costs of storage and transportation of such commodity that is in excess of the distributing or subdistributing agency's direct costs for such storage and transportation minus any amount that the Department provides to the State to pay such costs under Part 251 of this chapter.

(3) Under no circumstance shall recipients be required to make any payments in money, materials, or services for or in connection with the receipt of donated foods, nor shall voluntary contributions be solicited in connection with the receipt of donated foods for any purpose.

(b) *Sale of containers.* When containers in which donated foods are received are disposed of by sale, the proceeds of such sale shall be used solely in accordance with the provisions of paragraph (f)(2) of this section.

(c) *Claims.* [Reserved]

(d) *Demurrage.* Demurrage or other charges which accrue after a car or truck has been placed for unloading by the delivering carrier, or which accrue because placement of a car or truck is prevented, shall be borne by the distributing agency, except that demurrage or other charges may be borne by the Department where such charges accrue because of actions by the Department and without the fault or negligence of the distributing agency.

(e) *Redonation expenditures.* In accordance with Section 250.13(g), whenever a distributing agency requests authority to make redonation of any donated foods and the Department requests that the donated foods be federally inspected, these inspections will be made at the expense of the distributing agency. Any donated foods which the Department determines are acceptable for redonation shall be moved at the distributing agency's expense to the closest point within the FNS region in which the State is located where it can be utilized, or to a closer point outside the region, if such a transfer is mutually agreed to by the Department and the distributing agency. In those instances in which the distributing agency satisfactorily demonstrates to the Department that the need for any redonation resulted from no fault or negligence on its part, the Department shall assume such transportation costs as it determines to be proper. Whenver a redonation is made at the request of the Department, the Department shall pay all transportation and handling costs in connection with such redonation and shall pay to the distributing agency all storage and handling costs accrued on the donated foods at the time of redonation, as determined by the Department, except when the request is made as a result of negligence on the part of the distributing agency.

(f) *Use of funds accruing in operation of the program*—(1) *Funds accruing from claims.* [Reserved]

(2) *Other funds.* Funds accruing from the sale of containers, salvage of donated foods, assessment charges, or insurance shall be used only for the payment of expenses of the program which will improve program operations including, but not limited to, transportation, storage and handling of donated foods, salaries of persons directly connected with the program, and other program-related expenses. In instances when these funds are determined to be in excess of program needs, the funds shall be used in accordance with paragraph (f)(3) of this section. Funds accruing from the operation of the program shall not be used for: (i) Bad debts; (ii) contingencies; (iii) contributions and donations; (iv) entertainment; (v) fines and penalties; (vi) Governor's expenses; (vii) interest and other financial costs; (viii) legislative expenses; or (ix) underrecovery of costs under grant agreements, as described in the Office of Management and Budget Circular A–87.

(3) *Excess funds.* The distributing agency shall review the receipt and expenditure of funds annually to ensure that fund balances are not in excess of program needs. At a maximum, funds exceeding the previous three months' expenditures shall be considered in excess of program needs unless the distributing agency provides sufficient justification as to the need for such funds and receives approval from the FNSRO. In instances when it is determined that funds equal to or less than the expenditures for the previous three months are in excess of what is needed, the distributing agency shall reduce such funds. Expenditures of a nonrecurring nature, such as the purchase of automated data processing or other equipment, shall not be included when determining the previous three-months' expenditures. If excess funds accumulate by reason of collection of assessment charges, such excess funds shall be used to reduce such charges or shall be returned to contributors. If excess funds accrue from the sale of containers, salvage of donated foods, insurance, or recoveries of claims for the loss or damage of donated foods, such funds shall be (i) used to reduce assessment charges, (ii) used to purchase additional foods, (iii) used to improve program operations, or (iv) at the direction of the Department, paid to the Department. The distributing agency shall impose upon subdistributing agencies and recipient agencies similar provisions for the use of such funds accruing from the operation of their programs.

§ 250.16 Maintenance of records.

(a) *General requirements.* (1) Accurate and complete records shall be maintained with respect to the receipt, disposal, and inventory of donated foods including (i) end products processed from donated foods and (ii) the determination made as to liability for any improper distribution, use of, loss of, or damage to, such foods and the results obtained from the pursuit of claims by the distributing agency. Such records shall also be maintained with respect to the receipt and disbursement of funds arising from the operation of the distribution program, including the determination as to the amount of payments to be made by any processor, upon termination of processing contracts.

(2) Distributing agencies shall require all subdistributing and recipient agencies to maintain accurate and complete records with respect to the receipt, disposal and inventory of donated foods, including end products processed from donated food, and with respect to any funds which arise from the operation of the distribution program, including refunds made to recipient agencies by processors in accordance with Section 250.30(k).

(3) Unless a distributing agency maintains an offer-and-acceptance system in accordance with Section 250.48(e), the distributing agency shall maintain accurate and complete records with respect to amounts and value of commodities refused by school food authorities. School food authorities shall also be required to maintain such records of refusals.

(4) Any processor or other entity which contracts with a distributing agency, subdistributing agency or recipient agency shall be required to keep accurate and complete records with respect to the receipt, disposal, and inventory of such foods similar to those required of distributing agencies under this paragraph. Where donated foods have been commingled with commercial foods, the processor shall maintain records which will permit an accurate determination of the donated-food inventory. The processor shall also be required to keep formulae, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use made of such foods and their subsequent redelivery, in whatever form, to any distributing agency, subdistributing agency or recipient agency.

(5) All recipient agencies shall be required to keep accurate and complete records showing the data and method used to determine the number of eligible persons served by that agency.

(6) Failure by a distributing agency, subdistributing agency, recipient agency, processor, or other entity to maintain records required by this section shall be considered prima facie evidence of improper distribution or loss of donated foods and the agency, processor or entity shall be subject to the provisions of § 250.13(e).

(b) *Length of maintenance.* All records required by this section shall be retained for a period of 3 years from the close of the Federal fiscal year to which they pertain. However, in instances when claims action and/or audit findings have not been resolved, the records shall be retained as long as required for the resolution of such action or findings.

§ 250.17 Reports.

(a) *Monthly Report of Receipt and Distribution of Donated Foods (FNS–155).* Distributing agencies shall complete and submit to the FNSRO monthly inventory reports covering the receipt and distribution of donated foods on Form FNS–155 or other format approved by FNS. The report shall be submitted no later than 30 calendar days after the end of the reporting month. The distributing agency shall submit a list of individual food orders received for each food item delivered by the Department as an attachment to the FNS–155.

(b) *Physical inventory reports.* Distributing agencies shall complete and submit to the FNSRO semiannual physical inventory reports. In accordance with Section 250.14(d), such reports shall be submitted as an attachment to the June and December monthly inventory report. Physical inventory reports may be submitted in whatever format the distributing agency deems necessary. Physical inventory reports shall reflect a compilation of food items in inventory at the State level, at all processors and for each category of recipient agency at the local level.

(c) *Processing inventory reports.* Distributing agencies shall complete and submit a quarterly processing inventory report in accordance with Section 250.30(o).

(d) *Performance reports.* Monthly reports of performance shall be submitted by processors to distributing agencies in accordance with Section 250.30(m).

(e) *Other reports.* Distributing agencies shall complete and submit other reports relative to distribution operations in such form as may be required from time to time by the Department.

(Reporting requirements contained in paragraph (a) approved by the Office of Management and Budget under control number 0584–0001. Reporting requirements contained in paragraph (e) approved by the Office of Management and Budget under control numbers 0584–0028, 0584–0109, 0584–0288, and 0584–0293)

§ 250.18 Audits.

(a) *Rights of inspection and audit.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, may inspect and inventory donated foods in storage or the facilities used in the handling or storage of such donated foods, and may inspect and audit all records, including financial records, and reports pertaining to the distribution of donated foods and may review or audit the procedures and methods used in carrying out the requirements of this part at any reasonable time. Subdistributing agencies, recipient agencies, processors and food service management companies shall be required to permit similar inspection and audit by such entities or their representatives.

(b) *Distributing agency-sponsored audits.* (1) Each distributing agency shall provide for audits of all food distributing program operations including records pertaining to donated food acquisition, storage, distribution, processing activities within the State (except that of multi-State processors as defined in § 250.3) and financial information. Such audits shall be conducted in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (7 CFR Part 3015, Subpart I).

(2) The cost of these audits shall be considered part of administrative costs and State administrative expense funds may be used to pay any costs incurred for conducting audits of child nutrition programs in accordance with Part 235 of this chapter.

(c) *Independent CPA audits of multi-State processors.* (1) Multi-State processors shall obtain an independent audit by a certified public accountant (CPA) annually. Such audits shall be conducted in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (7 CFR Part 3015, Subpart I) and FNS audit guidelines. Processors shall ensure that auditors attend any FNS training sessions prescribed by the Secretary.

(2) The costs of the audits, including travel expenses to attend any FNS training sessions, shall be borne by the processors.

(3) Audit findings shall be submitted by the processor to FNS.

(4) Noncompliance with the audit requirement in paragraph (c)(1) of this section will render the processor ineligible to enter into another processing contract until the required audit has been conducted and deficiencies corrected.

(d) *Distributing agency or processor response.* Distributing agencies shall develop a written response to the FNSRO addressing deficiencies which have been identified through Federal and distributing agency-sponsored audits. Processors required to have annual CPA audits pursuant to paragraph (c) of this section shall develop a written response to FNS addressing deficiencies which have been identified in the audit. Such responses shall include: (1) Corrective action which has already been taken to eliminate the deficiency; (2) Corrective action which the distributing agency or processor proposes to take to eliminate the deficiency; (3) The timeframes for the implementation and completion of the corrective action; (4) A determination of what caused the deficiency; and (5) Deficiencies which have been identified that the distributing agency or processor takes exception to and an explanation for the exception. Distributing agencies shall submit a written response in accordance with timeframes established by the FNSRO. Multi-State processors shall submit a written response to FNS in accordance with timeframes established by FNS.

§ 250.19 Management evaluation systems.

(a) *General.* Each distributing agency shall establish a management evaluation system in order to assess the effectiveness of its food distribution program in meeting the requirements of these regulations. FNS will provide assistance to each distributing agency in discharging this responsibility.

(b) *Responsibilities of FNS.* FNS will establish evaluation procedures to determine whether distributing agencies have carried out the provisions of this part and FNS guidelines and instructions. FNS will conduct periodic reviews of multi-State sponsors.

(c) *Responsibilities of distributing agencies.* (1) Each distributing agency shall establish evaluation and review procedures encompassing eligibility, food ordering procedures, storage practices, inventory controls, reporting and recordkeeping requirements and compliance with nondiscrimination provisions. The procedures shall include: (i) A review of the following recipient agencies: (A) Charitable institutions; (B) Nutrition programs for the elderly; and (C) Nonprofit summer camps for children; (ii) An annual review of all storage facilities utilized by the distributing agency; (iii) An annual

review of all processors, except those that are multi-State processors as defined in § 250.3; and (iv) An annual review of all food service management companies under contract with recipient agencies in accordance with § 250.12(c) which are not under contract with a school participating in the National School Lunch Program or a commodity school under Part 210 of this chapter, or a school participating in the School Breakfast Program under Part 220 of this chapter.

(2) Each distributing agency shall design and implement a system to verify sales of end products to any recipient agencies under that distributing agency's authority in instances when a processor transfers end products to a distributor and the distributor sells the end product to the recipient agencies at a discount. At a minimum, such a system must: (i) Provide for the quarterly review of a statistically valid sample of sales information of all processors which contract with the distributing agency or contracting agencies under the authority of the distributing agency, including multi-State processors; (ii) support the projection of a claim against the processor when, in the review of the sample, it is determined that the value of donated foods has not been passed on to recipient agencies or when end products have been improperly distributed; and (iii) provide for the assessment of claims against the processor in accordance with FNS Instruction 410–1 Non-Audit Claims, Food Distribution Program, in instances when deficiencies have been identified. Distributing agencies may delegate the responsibility of sales verification to processors. In such instances, the distributing agency must establish guidelines which the processor must follow in conducting sales verification. These guidelines must ensure that a statistically valid sample of sales is verified quarterly. Processors shall report their findings to the distributing agency on a quarterly basis in accordance with Section 250.30(m). Distributing agencies must review the processor's sales verification system and the processor's findings for adequacy.

(3) The distributing agency shall submit a report of review findings to each entity reviewed. The report shall include: (i) Each deficiency found; (ii) The factors contributing to each deficiency; (iii) Recommendations for needed corrective action, including timetable for completion and/or claims action to be pursued, if any; and (iv) Provisions for evaluating effectiveness of corrective actions. A copy of each processor review report shall also be provided to the appropriate FNSRO.

(4) Distributing agencies shall monitor progress toward completion and the effectiveness of corrective actions taken in eliminating program deficiencies.

(5) In addition to the review requirements of paragraph (c)(1) of this section, each distributing agency shall make a continuing evaluation of all recipient agencies, and processors by monitoring performance reports, food requests, participation data, and data regarding refunds and discounts to recipient agencies and distributors for the receipt of end products.

(6) Distributing agencies shall, where applicable, require that subdistributing agencies monitor and review their operations in accordance with this paragraph.

(d) *Reponsibilities of State Agencies on Aging.* State Agencies on Aging which receive cash payments in lieu of donated foods in accordance with the provisions of § 250.42(c) shall monitor use of such cash after disbursement to nutrition programs for the elderly to ensure that the amounts so received are expended solely for the purchase of U.S. agricultural commodities and other foods of U.S. origin for such programs.

§ 250.20 Sanctions.

Any distributing agency which has failed to comply with the provisions of this part or any instructions or procedures issued in connection with it or any agreements entered into pursuant to it, may, at the discretion of the Department, be disqualified from further participation in any distribution program. Reinstatement may be made at the option of the Department. Disqualification shall not prevent the Department from taking other action through other available means when considered necessary, including prosecution under applicable Federal statutes.

§ 250.21 Civil rights. [Reserved]

§ 250.22 Complaints.

Distributing agencies shall investigate promptly complaints received in connection with the distribution or use of donated foods. Irregularities which are disclosed shall be corrected immediately. Serious irregularities shall be promptly reported to the Department. Distributing agencies shall maintain on file evidence of such investigations and actions. The Department reserves the right to make investigations and shall have the final determination as to when a complaint has been properly handled.

Subpart C—Processing and Labeling of Donated Foods

§ 250.30 State Processing of donated foods.

(a) *General.* Distributing agencies shall, at a minimum, operate a processing program which permits the employment of commercial facilities by distributing agencies, subdistributing agencies or recipient agencies for the purpose of processing donated foods which have provided in addition to the States' authorized level of assistance. The availability of such commodities is contingent upon the operation of a processing program. In instances when a processor can prove marketability of an end product containing at least one truckload lot of a single donated food item which is being provided in addition to the State's authorized level of assistance, the distributing agency shall enter into a processing contract on behalf of all eligible recipient agencies in accordance with paragraph (c) of this section. A processor shall prove the marketability of an end product in the form of recipient agencies' written intent to purchase the end products or on the basis of past sales of the end product to recipient agencies under the distributing agency's authority. Distributing agencies are encouraged to operate a processing program for donated foods which are provided as part of the States authorized level of assistance. This section does not pertain to food service management companies.

(b) *Permissible contractual agreements.* (1) In addition to the requirements set fourth in paragraph (a) of this section, a distributing agency, subdistributing agency, or recipient agency may contract for processing, pay the processing fee, and deliver the end products to eligible recipient agencies through its own distribution system.

(2) In addition to the requirements set forth in paragraph (a) of this section, a distributing agency or subdistributing agency may contract for processing on behalf of one or more recipient agencies. All recipient agencies eligible to receive the donated foods to be processed may receive end products made from those foods and produced under such processing contracts by virtue of the distributing agency-recipient agency agreement required by Section 250.12(b). Under this arrangement (i) processors shall be required to utilize either a refund system as defined in Section 250.3 or a system which provides refunds to distributors and discounts to recipient agencies through a distributor in accordance with paragraph (e) of this section, or (ii) processors may, with the

approval of the distributing agency, utilize either a discount or a refund system when they sell end products directly to recipient agencies.

(3) Distributing agencies shall permit subdistributing agencies and recipient agencies to enter into processing contracts with a processor under arrangements similar to those described in paragraphs (b) (1) or (2) of this section.

(c) *Requirements for processing contracts.* (1) Contracts with processors shall be in a standard written form and be reviewed by FNSRO. Processing contracts shall terminate no later than one year after they have been entered into and cannot be extended without either renegotiation or competitive bidding. Each year, contracting agencies shall choose one of the following methods for entering into contracts and shall use that method to contract for all end products which the contracting agency has decided to contract for or is required to contract for pursuant to paragraph (a) of this section for that school year: (i) The contracting agency shall enter into contracts with all processors seeking contracts for those end products or (ii) the contracting agency shall solicit bids for all those end products. Competitive bidding procedures shall, at a minimum, include the following provisions: (A) All proposed contracts shall be publicly announced at least once, not less than 14 calendar days prior to the opening of bids, and the announcement shall include the time and place of the bid openings; (B) The bids shall be publicly opened; and (C) When advertising for bids, the distributing agency shall adhere to the following minimum requirements: (*1*) The invitation to bid shall not specify a minimum price; (*2*) The invitation to bid shall contain standards upon which the bid shall be based; (*3*) Neither the invitation to bid nor the contract shall provide for loans or any other monetary benefit or term or condition to be made to distributing agencies by processors; and (*4*) The lowest qualified bid shall be accepted. The lowest bid shall be the lowest end product price including any refund or discount on the end product. In instances when the lowest bid is not accepted and the contracting agency is a distributing agency, the agency shall submit written justification to the FNSRO for review. In instances when the contracting agency is not the distributing agency, the bid shall be submitted to the distributing agency along with written justification as to why the lowest bid was not accepted. (iii) Regardless of the method used, contracting agencies shall not enter contracts with processors which cannot meet the following criteria: (A) The ability to meet the terms and conditions of the regulations and the distributing agency agreements; (B) The ability to furnish prior to the delivery of any donated foods for processing, a performance bond, an irrevocable letter of credit or an escrow account in an amount sufficient to protect the contract value of donated foods on hand or on order; (C) The ability to distribute end products to eligible recipient agencies; (D) A satisfactory record of integrity, business ethics, and performance; and (E) The ability to accept and provide storage for at least one truckload lot of a commodity item.

(2) Standard form contracts shall be prepared or reviewed by the appropriate State legal staff to assure conformity with the requirements of these regulations and of applicable Federal, State and local laws.

(3) The contract shall be signed for the processor by the owner, a partner, or a corporate officer duly authorized to sign the contract, as follows: (i) In a sole proprietorship, the owner shall sign the contract; (ii) In a partnership, a partner shall sign the contract; (iii) In a corporation, a duly authorized corporate officer shall sign the contract.

(4) At a minimum, each processing contract shall include: (i) The names and telephone numbers of the contracting agency and processor; (ii) A description of each end product, the quantity of each donated food and any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasoning which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), and the yield factor for each donated food. The distributing agency may waive the requirement to list other ingredients upon written request and justification from the processor. The yield factor is the percentage of the donated food which must be returned in the end product to be distributed to eligible recipient agencies. The yield factor for substitutable donated foods must be at least 100 percent with no allowable tolerance; (iii) the contract value of each donated food to be processed and, where processing is to be performed only on a fee-for-service basis, the processing fee to the contracting agency for a specified number, wright or measure of the end products to be delivered; (iv) A provision for: (A) termination of the contract upon thirty days written notice by the contracting agency or the processor and (B) immediate termination of the contract when there has been noncompliance with its terms and conditions by the contracting agency or the processor; (v) In the event of contract termination, a provision for disposition of donated foods and end products in the processor's inventories or payment of funds in accordance with paragraph (j) of this section; (vi) A provision for inspection and certification during processing, where applicable, by the appropriate acceptance service in accordance with paragraph (g) and (h) of this section; (vii) A provision that end products containing donated foods that are not substitutable under paragraph (f) of this section shall be delivered only to recipient agencies eligible to receive such foods; (viii) Provisions that the processor shall: (A) fully account for all donated foods delivered into its possession by production and delivery to the contracting agency or eligible recipient agencies of an appropriate number of units of end products meeting the contract specifications, and where end products are sold through a distributor, that the processor remains fully accountable for the donated foods until refunds or any other credits equal to their contracted value have been made to eligible recipient agencies in accordance with paragraph (k) of this section or to distributing agencies in accordance with paragraph (n)(2) of this section; (B) furnish to the contracting agency prior to the delivery of any donated foods for processing documentation that a performance supply and surety bond from a surety company listed in the most recent U.S. Department of Treasury Circular 570, an irrevocable letter of credit or an escrow account has been obtained in an amount that is, at a minimum, sufficient to protect the contract value of all donated food inventory on hand or on order, since the distributing agency is held liable by FNS for any donated foods provided to a processor; (C) use or dispose of the containers in which donated foods are received from the Department in accordance with the instructions of the contracting agency; (D) apply as credit against the processing fee or return to the contracting agency (*1*) any funds received from the sale of containers, and (*2*) the market value or the price received from the sale of any by-products of donated foods or commercial foods which have been substituted for donated foods; (E) substitute donated foods with

commercially purchased foods only in accordance with paragraph (f) of this section; (F) meet the requirements of paragraph (i) of this section for labeling end products; (G) maintain accurate and complete records pertaining to the receipt, disposal, and inventory of donated foods in accordance with Section 250.16; (H) submit processing performance reports in accordance with paragraph (m) of this section; and (I) submit annual reconciliation reports and make payments to distributing agencies for any outstanding refund applications or excessive inventories in accordance with paragraph (n)(2) of this section; (ix) A provision that approval of the contract by the distributing agency shall not obligate that agency or the Department to deliver donated foods for processing; (x) A description of the processor's quality control system and assurance that an effective quality control system will be maintained for the duration of the contract; (xi) In instances when the processor is a multi-State processor as defined in § 250.3, a provision the processor agrees to obtain an independent audit by a certified public accountant in accordance with § 250.18(c); (xii) A requirement that inventory drawdowns shall be limited to the actual amount of donated foods contained in the end product. Additional commodity required to account for production loss shall be obtained from non-donated foods; (xiii) In instances when end products are sold through a distributor a description of the system which will be utilized for the sale of the end products to recipient agencies; and (xiv) In instances when the distributing agency has delegated the responsibility for sales verification for end products provided by a distributor to recipient agencies at a discount, assurance that the processor will submit sales verification data to the distributing agency in accordance with § 250.30(m)(1).

(5) The processor shall not assign the processing contract or delegate any aspect of processing under a subcontract or other arrangement without the written consent of the contracting agency and the distributing agency.

(d) *End products sold by processors.* When recipient agencies pay the processor for end products, the processing contract shall include: (1) The processor's established wholesale price schedule for quantity purchases of specified units of end products, (2) an assurance that the price of each unit of end product purchased by eligible recipient agencies shall be discounted by the stated contract value of the donated foods contained therein, or a refund equal to such value made upon proof of purchase by an eligible recipient agency in accordance with paragraph (k) of this section; and (3) a provision that the contracting agency shall give the processor a list of all recipient agencies eligible to purchase end products under the contract.

(e) *End products sold by distributors.* When a processor transfers end products to one or more distributors for sale and delivery to recipient agencies, such sales shall be under either a refund system as defined in Section 250.3 or a system which provides refunds to distributors and discounts to recipient agencies. The processor shall make refund payments to distributors or recipient agencies in accordance with paragraph (k) of this section.

(f) *Substitution of donated foods with commercial foods.* The processing contract may provide that the processor may substitute for donated foods a like quantity of foods of the same generic identity and of equal or better quality; e.g., cheddar cheese for cheddar cheese, mozzarella cheese for mozzarella cheese, nonfat dry milk for nonfat dry milk. If the provision allowing substitution is included, the contract shall stipulate that (1) only butter, cheese, corn grits, corn meal, flour, macaroni, nonfat dry milk, peanut butter, peanut granules, roasted peanuts, rice, rolled oats, rolled wheat, shortening, soybean oil, spaghetti, and such other foods as FNS specifically approves may be substituted (substitution of meat and poultry items shall not be permitted) and (2) all components of commercial foods substituted for those donated must be of U.S. origin and be identical or superior in every particular of the donated-food specification as evidenced by certification performed by, or acceptable to, the applicable Federal acceptance service. Documentation must be maintained by both parties in accordance with Section 250.16. When there is substitution in accordance with this paragraph the donated foods may be utilized by the processor in his own commercial product but shall not otherwise be sold or disposed of in commercial channels. The applicable Federal acceptance service shall, upon request, determine if the quality analysis meets the requirements set forth by the Agricultural Stabilization and Conservation Service (ASCS) in the original inspection of donated foods, and when donated foods are non-substitutable, ensure against unauthorized substitutions, and verify that quantities of donated foods utilized are as specified in the contract. Distributing agencies shall monitor the substitution of donated foods and ensure that substitution is being made only in instances in which it is necessary to ensure uninterrupted production of an end product.

(g) *Meat and poultry inspection programs.* When donated meat or poultry products are processed or when any commercial meat or poultry products are incorporated into an end product containing one or more donated foods, all of the processing shall be performed in plants under continuous Federal meat or poultry inspection, or continous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection program. In addition to Food Safety and Inspection Service (FSIS) inspection, all meat and poultry processing shall be performed under Agricultural Marketing Service (AMS) acceptance service grading. The cost of this service shall be borne by the processor. In the event the processor cannot secure the services of an acceptance service grader, the processor shall notify the distributing agency who will in turn notify the appropriate FNSRO prior to any meat or poultry processing.

(h) *Certification by acceptance service.* (1) All processing activities or donated foods shall be subject to review and audit by the Department, including the applicable Federal acceptance service. The contracting agency may also require acceptance and certification by such acceptance service.

(2) In the case of substitutable donated foods, in deciding whether to require acceptance and certification, the contracting agency should consider the dollar value of the donated foods delivered to the processor.

(3) When contracting agencies require certification in accordance with paragraph (h) (1) or (2) of this section, the degree of acceptance and certification necessary under the processing contract shall be determined by the appropriate Federal acceptance service after consultation with the distributing agency concerning the type and value of the donated foods and anticipated volume of end products to be processed. The cost of this service shall also be borne by the processor.

(i) *Labeling end products.* (1) Except when end products contain donated foods that are substitutable under paragraph (f) of this section, the exterior shipping containers of end products and, where practicable, the individual wrappings or containers of end products, shall be clearly labeled

"Contains Commodities Donated by the United States Department of Agriculture. This Product Shall be Sold Only to Eligible Recipient Agencies."

(2) Labels on all end products shall meet applicable Federal labeling requirements.

(3) When a processor makes any claim with regard to an end product's contribution toward meal requirements of any child nutrition program, the processor shall follow procedures established by FNS, the Food Safety and Inspection Service of the Department, the National Marine Fisheries Service of the U.S. Department of Commerce or other applicable Federal agencies for approval of such labels.

(j) *Termination of processing contracts.* (1) When contracts are terminated and the processor has commodities remaining in inventory, the processor shall be directed, at the option of the distributing agency and the FNSRO, to do the following: (i) With respect to nonsubstitutable commodities, the processor shall (A) return the commodities to the contracting agency; (B) pay the contracting agency for the commodities based on the Department's replacement costs, determined by using the most recent data provided by the Department; or (C) pay the contracting agency for the commodities based on the contract value stated in the processor's contract; (ii) With respect to substitutable commodities, the processor shall (A) with the concurrence of any affected contracting agencies, transfer the donated foods to the accounts of other contracting agency(ies) with which the processor has contracts; (B) return the donated foods to the contracting agency; (C) replace the commodities with the same foods of equal or better quality as certified in accordance with paragraph (f)(2) of this section and deliver such foods to the contracting agency; (D) pay the contracting agency for the commodities based on the Department's replacement costs, determined by using the most recent data provided by the Department; or (E) pay the contracting agency for the commodities based on the contract value stated in the processor's contract.

(2) When a processor's contract is terminated at the processor's request or due to noncompliance or negligence on the part of the processor and commodities remaining in the processor's inventory are transported pursuant to paragraphs (j)(1)(i)(A), (j)(1)(ii)(B) or (j)(1)(ii)(C) of this section, the processor shall pay the transportation costs.

(3) Funds received by distributing agencies upon termination of contracts shall, at the option of FNS, be (i) used to replace the donated foods in kind, (ii) used by the distributing agency in the same manner as funds accruing from claims as described in Section 250.15(f)(1), or (iii) paid to the Department.

(k) *Refund payments.* (1) When end products are sold to recipient agencies in accordance with the refund provisions of paragraphs (d) or (e) of this section, each recipient agency shall submit refund applications to the contracting agency within 60 days of the date of purchase of end products in order to receive benefits. The contracting agency shall forward the refund application to the distributing agency within 10 days of receipt.

(2) The distributing agency shall review each application to verify that the recipient agency is an eligible purchaser and forward the application to the processor within 10 days of receipt.

(3) In instances where refunds are to be provided to distributors which have sold end products to recipient agencies at a discount, distributors shall submit refund applications to processors within 60 days of the date of sale to recipient agencies in order to receive benefits.

(4) Not later than 10 days after receipt of the application by the processor, the processor shall make a payment to the recipient agency or distributor equal to the stated contract value of the donated foods contained in the purchased end products covered by the application.

(l) *Contract approval.* Distributing agencies shall review and approve processing contracts entered into by subdistributing and recipient agencies prior to the delivery of commodities for processing under such contracts. The distributing agency which enters into or approves a processing contract shall provide a copy of the contract and of these regulations to the processor, forward a copy to the appropriate FNSRO, and retain a copy for its files.

(m) *Performance reports.* (1) Processors shall be required to submit to distributing agencies monthly reports of performance under each processing contract. Processors contracting with agencies other than a distributing agency shall submit such reports to the distributing agency having authority over that particular contracting agency. Performance reports shall be received no later than the final day of the month following the reporting period. The report shall include: (i) A list of all recipient agencies purchasing end products under the contract; (ii) Donated-food inventory at the beginning of the reporting period; (iii) Amount of donated foods received during the reporting period; (iv) Amount of donated foods transferred to and/or from existing inventory;

(v) Number of units of approved end products delivered to each eligible recipient agency during the reporting period and the number of pounds of each donated food represented by these delivered end products; (vi) Donated-food inventory at the end of the reporting period; (vii) Number of pounds of each donated food represented in sales to distributors; (viii) Number of pounds of each donated food represented in sales to distributors but not delivered to eligible recipient agencies; (ix) List of all contracting agencies and their locations with which the processor has processing contracts; (x) In instances in which sales verification has been delegated to the processor pursuant to § 250.19(c)(2), sales verification findings shall be reported to the distributing agency as an attachment to the September, December, March and June performance reports in whatever format the distributing agency deem necessary; and (xi) A certification statement that sufficient donated foods are in inventory or on order to account for the quantities needed for production of end products for State processing contracts and that the processor has on hand or on order adequate quantities of foods purchased commerically to meet the processor's production requirements for commerical sales.

(2) Distributing agencies shall review and analyze reports submitted by processors to ensure that performance under each contract is in accordance with the provisions set forth in this section.

(n) *Inventory controls.* (1) Distributing agencies shall monitor processor inventories to ensure that the quantity of donated foods for which a processor is accountable is the lowest cost-efficient level but in no event more than a six-month supply based on the processor's average monthly usage, unless a higher level has been specifically approved by the distributing agency on the basis of a written justification submitted by the processor. Under no circumstances should the amount of donated foods ordered by the contracting agency for processing purposes be in excess of anticipated usage or beyond the processor's ability to accept and store the donated foods at any one time. Distributing agencies shall make no further distribution to processors whose inventories exceed these limits until such inventories have been reduced.

(2) Processors shall complete and submit annual reconciliation reports to distributing agencies within 90 days

following the end of the agreement period. As a part of this annual reconciliation, processors shall pay distributing agencies for the contract value of donated foods (i) for any donated foods for which a timely refund application has not been submitted in accordance with paragraph (k) of this section and (ii) for inventories in excess of a six-month supply. In instances when the distributing agency has assigned an inventory level other than a six-month level, the processor shall pay the contract value of any donated food in excess of that level.

(3) Distributing agencies shall certify the accuracy of the annual reconciliation report and forward it to the ENSRO. All monies shall be used in accordance with § 250.15(f)(1).

(4) Distributing agencies shall not submit food requisitions for processors reporting no sales activity during the prior year's contract period unless documentation is submitted by the processor which outlines specific plans for proudct promotion or sales expansion.

(o) *Processing inventory reports.* Distributing agencies shall submit to the FNSRO not later than 60 days following the close of each Federal fiscal quarter a report showing separately for each processor under agreement with contracting agencies within the State: (1) The donated-food inventory at the beginning of the previous quarter; (2) amounts of donated foods received during the quarter; (3) amount of donated foods transferred to and/or from existing inventory; (4) amounts of donated foods used during the quarter; (5) inventory at the close of the quarter; and (6) each contracting agency and its location with which the processor has processing contracts.

(p) *Cooperation with administering agencies for child nutrition programs.* If the distributing agency which enters into or approves contracts for end products to be used in a child nutrition program does not also administer such program, it shall collaborate with the administering agency by (1) giving that agency an opportunity to review all such contracts to determine whether end products to be provided contribute to required nutritional standards for reimbursement under the applicable regulations for such program (7 CFR Parts 210, 225, and 226) or are otherwise suitable for use in such program; (2) consulting with that agency with regard to the labeling requirements for the end products; and (3) otherwise requesting technical assistance as needed from that agency.

(1) *FNSRO review of contracts and inventory reports.* The FNSRO shall (1) review all processing contracts and provide guidance, including written recommendations for termination, where necessary, to distributing agencies concerning any contracts which do not meet the requirements of this section; (2) allow distributing agencies 30 days to respond to any recommendation concerning contracts not meeting the requirements of this section; (3) review and analyze the processing inventory reports required by paragraph (o) of this section to ensure that no additional donated foods shall be distributed to processors with excess inventories until such inventories have been reduced; (4) assist distributing agencies in reducing such inventories; and (5) review annual reconciliation reports required by paragraph (n) of this section and ensure that payments for outstanding refund applications or excessive inventories have been made.

(r) *Availablity of copies of processing contracts.* Contracts entered into in accordance with this section are public records and FNS will provide copies of such contracts to any person upon request. The FNSRO will retain copies of processing contracts submitted by distributing agencies for a period of three years from the close of the Federal fiscal year to which they pertain.

(s) *Processing activity guidance.* Distributing agencies shall develop and provide a processing manual or similar procedural material for guidance to contracting agencies, recipient agencies, and processors. Distributing agencies must revise these materials as necessary to reflect policy and regulatory changes. This guidance material shall be provided to contracting agencies, recipient agencies and processors at the time of the approval of the initial agreement by the distributing agency, when there have been regulatory or policy changes which necessitate changes in the guidance materials, and upon request. The manual shall include, at a minimum, statements of the distributing agency's policies and procedures on (1) contract approval, (2) monitoring and review of processing activities, (3) recordkeeping and reporting requirements, (4) inventory controls, and (5) refund applications.

(t) *Funding.* Distributing agencies which operate a processing program are eligible to receive State administrative expense funds to defray costs associated with the processing of donated foods for use in child nutrition programs in accordance with State Administrative Expense Funds Regulations (7 CFR Part 235)

(Approved by the Office of Management and Budget under control number 0584-0007)

Subpart D—Eligible Recipient Agencies and Programs

§ 250.40 Nonprofit summer camps for children.

(a) *Distribution.* (1) The distributing agency shall distribute donated foods only to those summer camps which have entered into a written agreement for participation in the program with the distributing agency in accordance with § 250.12(b). Prior to entering into a written agreement the summer camp shall provide verification of its tax-exempt status under the Internal Revenue Code. In addition to the terms and conditions set forth in § 250.12(b), the written agreement shall, at a minimum, include: (i) The name and location of the summer camp(s); (ii) Number of camps or sites; (iii) Number of sessions to be offered during camping season; (iv) Number of adults and children participating in the activities of the summer camp at each session; (v) Total number of days meals will be served; (vi) Number of meals to be served daily; (vii) Assurance that tax-exempt status will be maintained; (viii) Indication of whether the summer camp(s) will employ the services of a food service management company; (ix) Assurance that a brochure or public announcement of open admission policy will be provided and that the summer camp agrees to maintain racial/ethnic data; (x) Assurance that a physical inventory will be conducted and an inventory report submitted to the State distributing agency at the end of the camping session; and (xi) Assurance that any excess inventory will be returned.

(2) Distributing agencies shall distribute donated foods only after determining that the number of adults participating in camp activities, as compared with the number of children under 18 years of age, is not unreasonable in light of the nature of the camp and the characteristics of the children in attendance. Persons 18 years of age and over, including program directors, counselors, and others who engage in recreational, educational, and direct administrative functions, are to be considered as adults participating in the activities of a summer camp. Employees whose presence on camp premises is solely for the purpose of performing duties such as cooking, gardening, property maintenance, or similar support functions are not considered as adults participating in summer camp activities. In addition, persons such as nurses, therapists, and attendants who perform professional, supervisory, or custodial services are not considered as

adults participating in the activities of a summer camp if they perform services essential to the participation of mentally, emotionally, or physically handicapped children.

(3) Distributing agencies shall redonate all donated foods remaining in summer camps at the end of the camping seasons to other recipient agencies eligible to receive that type of donated food.

(4) Nonprofit summer camps for children may employ food service management companies to conduct food service operations in accordance with Section 250.12(c).

(b) *Quantities and value of donated foods.* Distribution of donated foods to eligible summer camps shall be made on the basis of the average number of meals to be served daily to children as evidenced by the most recent written caseload factor information contained in the agreement.

(c) *Types of donated foods authorized for donation.* Nonprofit summer camps for children are eligible to receive donated foods under section 416, section 32, section 709 and section 4(a).

§ 250.41 Charitable institutions.

(a) *Distribution.* (1) The distributing agency shall distribute donated foods only to those charitable institutions which have entered into a written agreement for participation in the program with the distributing agency in accordance with § 250.12(b). Prior to entering into a written agreement the charitable institution shall provide verification of the institution's tax-exempt status under the Internal Revenue Code. In addition to the terms and conditions set forth in § 250.12(b), written agreements shall, at a minimum, include: (i) The name and location of the charitable institution; (ii) Assurance that tax-exempt status will be maintained; (iii) Total number of days meals will be served; (iv) Average daily number of participants; (v) Number of meals to be served daily to needy persons; (vi) Financial data that show the total annual amount of funds received by the institution that are derived, respectively, from (A) subsidized income and (B) nonsubsidized income. For the purpose of this section "subsidized income" shall mean income from public tax funds which are provided on behalf of participants that have been determined to be in need of financial assistance through a means-tested program such as Medicaid or income received through private federally tax-exempt contributions which are provided for the care of participants which the institution has determined to be in need of financial assistance. "Nonsubsidized income" shall mean all other income, including payments made by institutional participants for services received and payments made on behalf of participants by persons legally responsible for their support; (vii) Assurance that at a minimum increases or decreases of 10 percent in population or income will be reported to the distributing agency; (viii) Indication of whether the charitable institution will employ the services of a food service management company to conduct its food service operations; (ix) Assurance that proper inventory controls will be maintained; and (x) Assurance that all reports will be submitted as required by the distributing agency.

(2) Adult correctional institutions are eligible to receive donated foods as charitable institutions, to the extent that needy persons are served, if they conduct rehabilitation programs that are: (i) Available to either a majority of the total inmate population (including inmates awaiting trial or sentencing) or to a majority of sentenced inmates; and (ii) of sufficient scope to permit participation for a minimum of 10 hours per week per inmate by either a majority of the total inmate population or a majority of sentenced inmates. Prior to executing an agreement for donation of foods to an adult correctional institution, the distributing agency shall require the institution's director or other responsible official to provide a written statement certifying that the institution conducts such rehabilitation programs. The statement shall be reviewed annually and maintained as part of the agreement.

(3) Charitable institutions may employ food service management companies to conduct food service operations in accordance with Section 250.12(c).

(b) *Quantities of donated foods.* Distribution of donated foods to eligible charitable institutions shall be made on the basis of the average number of meals served daily to needy persons. To determine the number of needy persons being served, the distributing agency shall determine the proportion of subsidized income by dividing the subsidized income by the total subsidized and nonsubsidized income (as defined in paragraph (a) of the section) and multiplying that number by the average daily number of participants. The distributing agency shall use the income and average daily participation figures reflected in the agreement in determining the number of needy persons being served by the institution in accordance with the above formula. Income and participation figures shall be based on the institution's records for the previous year and shall be adjusted, at a minimum, any time the population or income increases or decreases by ten percent. The distributing agency shall develop a system to review and update caseload factor information by September 30 of each fiscal year.

(c) *Types of donated foods authorized for donation.* Charitable institutions are eligible to receive donated foods under section 416, section 32, section 4(a), and section 709.

(Approved by the Office of Management and Budget under control number 0584–0305)

§ 250.42 Nutrition programs for the elderly.

(a) *Distribution.* Distributing agencies shall enter into an agreement with the State Agency on Aging responsible for administering programs funded under Titles III or VI of the Older Americans Act of 1965 in accordance with § 250.12(b) unless that State Agency on Aging has elected to receive all cash in lieu of donated foods. Distributing agencies shall distribute donated foods only to nutrition programs for the elderly which have entered into such an agreement. Food service management companies may be employed to conduct food service operations in accordance with §250.12(c).

(b) *Quantities and value of donated foods*—(1) *Quantities.* Distribution of donated foods to nutrition programs for the elderly shall be based on the level of assistance per meal as required by the Older Americans Act of 1965, as amended, and on the number of eligible meals served within the State as evidenced by written caseload factor information provided by the State Agency on Aging.

(2) *Value.* (i) For the fiscal year ending September 30, 1979, and each fiscal year thereafter, the quantity of donated foods to be made available to each State Agency on Aging for distribution to nutrition programs for the elderly shall be valued at not less than 30 cents for each meal which such State Agency on Aging, in accordance with regulations and guidelines authorized by the Commissioner on Aging, United States Department of Health and Human Services, reports as having been served or, where necessary, estimates will be served within the State or to Indian Tribal Organizations during the year. The value of donated foods to be distributed to nutrition programs for the elderly, or, where applicable, the amount of cash payments will be adjusted on an annual basis to reflect changes in the series for food away from home of the Consumer Price Index for all urban consumers published by the

Bureau of Labor Statistics of the Department of Labor: *Provided, however,* That (A) this quantity will be reduced to the extent that a State Agency on Aging elects to receive cash in lieu of donated foods in accordance with paragraph (c) of this section and (B) the quantity of donated foods to be provided to any State Agency on Aging for any Federal fiscal year shall not be adjusted on the basis of meal reports or estimates submitted after July 1 of such fiscal year. (ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, in any fiscal year in which compliance with paragraph (b)(2)(i) of this section costs more than the amounts authorized to be appropriated under the Older Americans Act of 1965, as amended for that fiscal year, the Secretary shall reduce the cents per meal level determined pursuant to paragraph (b)(2)(i) of this section for that fiscal year as necessary to meet the authorization of appropriations for that fiscal year. If such action is necessary, the per meal level will be reduced uniformly for each meal served during that fiscal year.

(c) *Cash in lieu of donated foods.* (1) Any State Agency on Aging may, for the purposes of the programs authorized by Titles III and VI of the Older Americans Act of 1965, as amended, elect to receive cash payments in lieu of all or any portion of the donated foods that it would otherwise receive under paragraph (b) of this section during any Federal fiscal year.

(2) When a State Agency on Aging elects to receive cash payments in lieu of donated foods, that election shall be binding on the State Agency on Aging for the Federal fiscal year to which it pertains, and FNS shall make cash payments to the State Agency on Aging equivalent in value to the donated foods that would otherwise have been provided. Cash payments shall be made for each Federal fiscal quarter by means of Letters of Credit issued by FNS through the appropriate U.S. Treasury Regional Disbursing Office or, where applicable, by means of U.S. Treasury checks, based on the best data available to FNS as to the number of meals to be served by nutrition programs for the elderly administered by each State Agency on Aging during that fiscal quarter.

(3) In instances when it is necessary to reduce the annual level of assistance specified in paragraph (b)(2)(i) of this section, the level will be reduced in accordance with paragraph (b)(2)(ii) of this section. Once it has been established that the reduced per meal level will be sufficient to avoid any further adjustment, any remaining (up to the level of assistance specified in paragraph (b)(2)(i) of this section) funds will be disbursed so that each State will receive an equal amount on a per meal basis.

(4) To be eligible for reimbursement by FNS, claims for cash payment for meals served by nutrition programs for the elderly shall be submitted by State Agencies on Aging and Indian Tribal Organizations no later than 90 days following the close of the Federal fiscal quarter for which payment is claimed.

(5) The State Agency on Aging desiring to receive funds under this paragraph shall enter into a written agreement with FNS pursuant to § 250.12(a) to: (i) Promptly and equitably disburse any cash it receives in lieu of donated foods to nutrition programs for the elderly after consideration of the needs of such programs and the availability of other resources, including any donated foods available under paragraph (b) of this section; (ii) establish such procedures as may be necessary to ensure that the cash disbursements are used by nutrition programs for the elderly solely for the purpose of purchasing U.S. agricultural commodities and other foods of U.S. origin for their food service operations; (iii) maintain and retain for 3 years from the close of the Federal fiscal year to which they pertain complete and accurate records of (A) all amounts received and disbursed under paragraph (c) of this section and (B) the manner in which consideration was given to the needs and resources; and (iv) permit representatives of the Department and of the General Accounting Office of the United States to inspect, audit, and copy such records at any reasonable time.

(6) Funds provided under paragraph (c) of this section shall be subject to the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

(d) *Types of donated foods authorized for donation.* Nutrition programs for the elderly are eligible to receive donated foods under section 416, section 32, section 311, section 709, and section 14.

§ 250.43 Disaster organizations.

(a) *Eligibility.* In instances when the Secretary has determined that a major disaster or emergency situation exists, disaster organizations are eligible to receive donated foods for distribution to disaster victims and shall remain eligible for the duration of the major disaster or emergency as determined by the Secretary. In areas where the Food Stamp Program is in operation donated foods may be distributed for household use only so long as the Secretary finds that the commercial channels of trade have been disrupted because of a major disaster or other emergency situation. Prior to providing donated foods to disaster organizations, the distributing agency shall require the disaster organization to make application for the receipt and distribution of donated foods in accordance with paragraphs (b) and (c) of this section. Such applications shall be confirmed in writing and maintained in accordance with the recordkeeping requirements of this part.

(b) *Distribution of donated foods for use in providing congregate meal service.* (1) In order to obtain donated foods for use in providing congregate meal service, disaster organizations shall request approval from the appropriate distributing agency, giving the following information to the extent possible: (i) Descriptions of disaster situation; (ii) Number of people requiring meals and congregate meal service period; (iii) Quantity and types of food needed for congregate meal service; and (iv) Number and location of sites providing congregate meal service.

(2) Following its approval of the request for donated foods, the distributing agency will make appropriate foods available to the disaster organization and within 24 hours shall report the information listed in paragraph (b)(1) of this section to the FNSRO.

(c) *Household distribution.* In order to obtain donated foods for household distribution in areas served by the Food Stamp Program when commercial food distribution channels are disrupted, the distributing agency shall request approval through the FNSRO. In the request, the distributing agency shall cite the following information: (1) Major disaster or emergency situation; (2) Number of households affected; (3) Anticipated distribution period; (4) Method of distribution available; and (5) Quantity and types of food needed for distribution.

(d) *Quantities and value of donated foods.* The distributing agency shall make donated foods available to eligible disaster organizations based on the caseload factor information provided by the disaster organization.

(e) *Types of donated foods authorized for donation.* Disaster organizations providing major disaster or other emergency food asssistance under this part are eligible to receive donated foods under section 416, section 32, section 709 and section 4(a).

(f) *Summary report.* Within 30 days following termination of the major disaster or the emergency, the distributing agency shall provide a

summary report to the appropriate FNSRO using Form FNS–292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

(g) *Replacement.* To the extent donated foods are available, FNS will replace donated foods used from the distributing agency's stocks for major disaster and emergency assistance. The distributing agency shall request the replacement of foods used for major disaster and other emergency food assistance, in writing to FNSRO, no later than 30 days following termination of the disaster or emergency.

§ 250.44 Special group food assistance programs.

(a) *Eligibility.* In situations of distress in which the need for food assistance cannot be met under other provisions of this part, and distributing agency may request, through the FNSRO, donated foods for use in special group food assistance programs. The request shall contain the following information: (1) Description of situation requiring special group food assistance; (2) Number of needy persons requiring meals; (3) Anticipated distribution period (not to exceed 30 days); (4) Quantities and types of foods needed for group food service; (5) Method of providing the special group food assistance (organization and facility); and (6) Name and address of disaster organization(s) that will conduct the special group food assistance program.

Once approval is granted by the Secretary, the distributing agency may distribute donated foods to the disaster organizations named in the request for use in conducting special group food assistance programs. Such distributions shall not exceed 30 days and shall be targeted to groups which are predominately composed of needy persons. The distributing agency and disaster organizations shall conduct any distribution under this section in accordance with instructions specified by the Secretary. The disaster organizations shall give to the distributing agency assurance that such special food assistance programs will be conducted in accordance with these instructions.

(b) *Quantities and value of donated foods.* Based on the caseload factor information contained in the request, the distributing agency shall make donated foods available to those disaster organizations named in the request.

(c) *Types of donated foods authorized for donation.* Disaster organizations providing disaster or other emergency food assistance under this part are eligible to receive donated foods under section 416, section 32, section 709 and section 4(a).

(d) *Summary report.* Within 30 days following termination of the special group food assistance program, the distributing agency shall provide a summary report to the appropriate FNSRO using Form FNS–292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

(e) *Replacement.* To the extent donated foods are available, FNS will replace donated foods used from the distributing agency's stocks for the special group food assistance program under this section. The distributing agency shall request the replacement of foods used for special group food assistance, in writing to FNSRO, no later than 30 days following termination of the special group food assistance programs.

§ 250.45 Commodity Supplemental Food Program.

(a) *Distribution.* The distributing agency shall distribute donated foods to the State agency which is designated by the State to administer the Commodity Supplemental Food Program for that State and which has entered into a written agreement with the Department for the administration of that program in accordance with 7 CFR part 247, the regulations for that program. The State agency administering the Commodity Supplemental Food Program shall distribute donated foods to local agencies for use by eligible recipients in accordance with the provisions of 7 CFR Part 247 and with the provisions of this part, and may enter into an agreement with the distributing agency for use of the distributing agency's facilities for distribution.

(b) *Quantities of donated foods.* Distribution of donated foods to the designated State agencies for the Commodity Supplemental Food Program shall be made on the basis of each State agency's quarterly estimate of need.

(c) *Types of donated foods authorized for donation.* State agencies distributing donated foods through the Commodity Supplemental Food Program are eligible to receive such foods under section 32, 416, section 709 and section 4(a).

§ 250.46 Food Distribution Program in the Trust Territory of the Pacific Islands.

(a) *Distribution.* The distributing agency shall make donated foods available for distribution to households by those welfare agencies which certify households in accordance with a plan of operation approved by FNS, as required by paragraph (d) of this section. Distribution of donated foods to households shall be made in accordance with the approved plan of operation.

(b) *Quantities and value of donated foods.* Distribution of donated foods shall be based on the actual number of households in need of food assistance.

(c) *Types of donated foods authorized for donation.* Agencies which make distribution to needy persons are eligible to receive foods under section 416, section 32, section 709 and section 4(a).

(d) *Plan of operation.* Prior to making disribution to agencies or households, the distributing agency shall submit a plan of operation for approval by the appropriate FNSRO. Such plan shall incorporate the procedures and methods to be used in certifying households as in need of food assistance; in making distribution to households; and in providing a fair hearing to households whose claims for food assistance under the plan are denied or are not acted upon with reasonable promptness, or who are aggrieved by an agency's interpretation of any provision of the plan. No amendment to the plan of operation of the distributing agency shall be made without prior approval of FNS, and FNS may require amendment of any plan as a condition of continuing approval. The distributing agency shall require welfare agencies making distribution to households to conduct distribution programs in accordance with all provisions of the State plan of operation. As a minimum, the plan shall include the following: (1) The name of the public welfare agency or agencies which will be responsible for certification of households; (2) The manner in which donated foods will be distributed, including, but not limited to, the identity of the agency that will distribute donated foods, the storage and distribution facilities to be used and the method of financing; (3) *The specific criteria to be used in certifying households as in need of food assistance.* The income and resource standards established by the distributing agency for use by welfare agencies in determining the eligibilty of applicant households, after October 1979, shall continue to be those standards used as of that date which were incorporated in a plan of operation approved by FNS, unless an amendment to such standard is required or approved by FNS; (4) The method or methods that will be used to verify the information upon which the certification of eligibility is based, including the kinds of documentary evidence that applicants are required to furnish to obtain certification; (5) Provisions for

periodically reviewing the certification of households to discover any change in their status which would necessitate a change in the determination of eligibility. The eligibility of households shall be reviewed at least every three months, except that such reviews may be made at longer periods, not to exceed 12 months, provided that such longer periods are based upon a determination by the certifying agency that the income and resources available to such households will probably remain essentially unchanged during such period; (6) Provisions for identifying each person who has been designated to receive donated foods for a household; (7) Assurance that the distribution of donated foods shall not be used as a means to further the political interest of any individual or party, and that there shall be no discrimination against recipients of donated foods because of race, color, national origin, sex, age or handicap; (8) Assurance that (i) citizenship or durational residence requirements shall not be imposed as a condition of eligibility and (ii) recipients shall not be required to make any payments in money, materials or services, for or in connection with the receipt of donated foods, and that they shall not be solicited in connection with the receipt of donated foods for voluntary cash contributions for any purpose; (9) The manner in which the distributing agency plans to supervise the program; and (10) Definitions of any terms used which cannot be determined by reference to Webster's New International Dictionary (third edition).

(e) *Operating expense funds*—(1) *Application for funds.* To receive administrative funds, the distributing agency shall submit Form AD–623, "Application for Federal Assistance," to the appropriate FNSRO at least three months prior to the beginning of the Federal fiscal year. Approval of the application by FNS shall be a prerequisite to payment of any funds to the distributing agency. The Department will make payments to the distributing agency to assist it in meeting operating expenses incurred in administering food distribution for needy persons.

(2) *Availability of funds.* FNS will review and evaluate the budget information submitted by the distributing agency in relationship to the distributing agency's plan of operation and any other factors which may be relevant to FNS' determination as to whether the estimated expenditures are reasonable and justified. FNS will give written notification to the distributing agency of (i) its approval or disapproval of any or all of the estimated expenditures; and (ii) the amount of funds which will be made available.

(3) *Payment of funds.* Payments shall be made to the distributing agency through a Letter of Credit or an advance by Treasury Check. These payments will be issued in accordance with Treasury Department procedures, Treasury Circular No. 1075 and through the appropriate Treasury Regional Disbursing Office (RDO).

(4) *Use of funds.* The distributing agency shall make every reasonable effort to ensure the availability of a food distribution program for needy persons in households and shall assign priority in the use of any funds received under this section to accomplish that objective. Any remaining funds shall be used to expand and improve distribution to needy households. Such funds may be used for any costs which are not disallowed under Office of Management and Budget Circular A–87 (a copy of which may be obtained from FNA) and which are incurred in distributing donated foods to households, including determining eligibility of recipients, except for the purchase cost of land and buildings. In no event shall such funds be used to pay any portion of any expenses if reimbursement or payment therefore is claimed or made available from any other Federal source.

(5) *Accounting for funds.* The distributing agency which receives administrative funds under this section shall establish and maintain an effective system of fiscal control and accounting procedures. The accounting procedures maintained by the distributing agency shall be such as to accurately reflect the receipt, expenditure and current balance of funds provided by FNS. The accounting procedures shall also provide for segregation of costs specifically identifiable to the Food Distribution Program from any other costs incurred by the distributing agency. Any budget revisions by the distributing agency which require the transfer of funds from an FNS approved cost category to another shall be in accordance with the budget revision procedures set forth in Part 3015 and shall be approved by FNS prior to any transfer of funds.

(6) *Return, reduction and reallocation of funds.* (i) FNS may require the distribution agency to return prior to the end of the Federal fiscal year any or all unobligated funds received under this section, and may reduce the amount it has apportioned or agreed to pay to the distributing agency if FNS determines that: (A) The distributing agency is not administering the Food Distribution Program in accordance with its plan of operation approved by FNS and the provisions of this part; (B) The amount of funds which the distributing agency requested from FNS is in excess of actual need, based on reports of expenditures and current projections of program needs; or (C) Circumstances or conditions justify the return, reallocation or transfer of funds to accomplish the purpose of this part.

(ii) The distributing agency shall return to FNS within 90 days following the close of each Federal fiscal year any funds received under paragraph (e) of this section which are unobligated at that time.

(7) *Financial reports.* The distributing agency shall submit quarterly and annual reports to FNS on Form SF–269 concerning the obligations, expenditure and status of funds received under this section. In addition, the distributing agency receiving funds under paragraph (e) of this section shall submit any other reports in such form as may be required from time to time by the Department.

(f) *Records, reports and audits.* The distributing agency shall (1) maintain, and retain for three years from the close of the Federal fiscal year to which they pertain, complete and accurate records of all amounts received and disbursed under paragraph (e) of this section, (2) keep such accounts and records as may be necessary to enable FNS to determine whether there has been compliance with this section, and (3) permit representatives of the Department and of the General Accounting Office of the United States to inspect, audit, and copy such records and accounts at any reasonable time.

§ 250.47 Food Distribution Program on Indian Reservations.

(a) Distributing agencies which operate a food distribution program on an Indian reservation shall comply with the provisions set forth in §§ 250.1, 250.2, 250.3, 250.10, 250.11, 250.12, 250.13 (with the exception of paragraph (d)(2)), §§ 250.14, 250.15 and 250.30.

(b) In addition to complying with the provisions identified in paragraph (a) of this section, distributing agencies shall also comply with the provisions set forth in Part 253, Food Distribution Program on Indian Reservations.

§ 250.48 Schools or school food authorities and commodity schools.

(a) *Distribution.* Schools or school food authorities which participate in the National School Lunch Program or as commodity schools under Part 210 of this chapter or the School Breakfast Program under Part 220 of this chapter are eligible to receive donated foods.

The distributing agency shall distribute donated foods only to those schools whose eligibility for participation in the program has been confirmed in writing by the State agency or FNSRO administering the applicable program. Lists of participating schools which have been provided to the distributing agency by the administering State agency or FNSRO may serve as written confirmation of eligibility. Schools or school food authorities may employ food service management companies to conduct food service operations in accordance with Section 250.12(c) and Parts 210 and 220 of this chapter.

(b) *Quantities and value of donated foods*—(1) *Quantities.* Distribution of donated foods to school which participate in the National School Lunch Program or as commodity schools under Part 210 shall be made on the basis of the average daily number of meals to be served which meet the meal-type requirements prescribed in the regulations for the National School Lunch Program under Part 210 of this chapter, as evidenced by the most recent written caseload factor information provided by the administering State agency or FNSRO. The distributing agency shall develop a system to review and update caseload factor information by June 30 and December 30 of each year.

(2) *Value.* (i) For each school year, the national average value of donated foods to be made available to States for distribution to schools participating in the National School Lunch Program (7 CFR Part 210), or where applicable, cash payments in lieu thereof, shall not be less than 11 cents for each lunch and shall be adjusted on July 1, 1982, and on each July 1 thereafter, to reflect changes in the Price Index for Food Used in Schools and Institutions prescribed by section 6(e) of the National School Lunch Act, as amended. These adjustments shall be computed to the nearest one-fourth cent and shall be made effective as of the beginning of each school year. Not less than 75 percent of the food distribution assistance shall be in the form of donated foods. (ii) For each school year, the national average value of donated foods to be provided to States for distribution to commodity schools shall not be less than the amount specified in paragraph (b)(2)(i) of this section, plus an amount equal to the national average payment established under section 4 of the National School Lunch Act as amended, for each lunch served by such schools: *Provided, however,* That this amount shall be reduced to the extent that FNS provides up to 5 cents per lunch of this value in cash in lieu of donated foods for donated-food processing and handling expenses on behalf of such schools, in accordance with Part 240 of this chapter.

(c) *Cash in lieu of donated foods for schools.* Where a State has phased out its food distribution facilities prior to July 1, 1974, such State may, in accordance with Part 240 of this chapter, elect to receive cash payments in lieu of donated foods for use in school lunch programs which participate in the National School Lunch Program under Part 210 of this chapter.

(d) *Types of donated foods authorized for donation.* Schools or school food authorities which participate in the National School Lunch Program or as commodity schools under Part 210 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14. Schools or school food authorities which participate in the School Breakfast Program under Part 220 are eligible to receive donated foods under section 416, section 32, section 709 and section 14.

(e) *Refusal of donated foods by school food authorities.* (1) Any school food authority participating in food service programs under the National School Lunch Act, as amended, may refuse, at the time they are offered, donated foods and other foods offered for delivery for lunches in any school year if such foods cannot be used effectively. The school food authority may receive, in lieu of the refused donated foods, other donated foods to the extent that they are available during the school year: *Provided, however:* That not more than 20 percent of the value of the donated foods offered to a school food authority for lunches during the school year shall be subject to replacement with other available donated foods unless replacement based on the refusal of more than 20 percent of such value is feasible and practical.

Prior to making distribution to schools, distributing agencies shall notify each school food authority of its right to refuse delivery and to receive other donated foods, if available, in lieu of those refused. Notification of donated food refusal rights shall be provided by means of a letter or by an addenum to the agreement required by Section 250.12(b) to each school food authority prior to the beginning of each school year.

(2) If the distributing agency demonstrates on the basis of existing records that it is maintaining an effective offer-and-acceptance system as defined in § 250.3, there can be no refusal of donated foods as provided in paragraph (e)(1) of this section.

(f) *Use of donated foods in home economics courses.* Schools or school food authorities receiving donated foods under this part may use such foods for the purpose of training students in home economics, including college students if the same facilities and instructors are used for training both high school and college students in home economics courses. Home economics includes classes in general home economics, food purchases, nutrition, food preparation, cooking, child care and health.

§ 250.49 Nonresidential child care institutions.

(a) *Distribution.* The distributing agency shall distribute donated foods only to those nonresidential child care institutions whose eligibility for participation in the Child Care Food Program has been confirmed in writing by the State agency or FNSRO administering the program, where applicable. Lists of participating nonresidential child care institutions which have been prepared by the administering State agency or FNSRO may serve as written confirmation of eligibility. Nonresidential child care institutions may employ food service management companies to conduct food service operations in accordance with § 250.12(c) and Part 226 of this chapter.

(b) *Quantities and value of donated foods*—(1) *Quantities.* Distribution of donated foods to nonresidential child care institutions shall be made on the basis of the average daily number of lunches and suppers to be served which meet the meal-type requirements prescribed in the regulations for the Child Care Food Program under Part 226 of this chapter, as evidenced by the most recent written caseload factor information provided by the administering State agency or FNSRO. The distributing agency shall develop a system to review information by June 30 and December 30 of each year.

(2) *Value.* For each school year, the national average value of donated foods to be made available to States for distribution to nonresidential child care institutions, or cash payments in lieu thereof, shall not be less than 11 cents for each lunch and supper and shall be adjusted on July 1, 1982, and on each July 1 thereafter, to reflect changes in the Price Index for Food Used in Schools and Institutions prescribed by section 6(e) of the National School Lunch Act, as amended. These adjustments shall be computed to the nearest one-fourth cent and shall be made effective at the beginning of each school year.

(c) *Cash in lieu of donated foods.* In accordance with Part 240 of this chapter, State agencies may elect to receive cash payments in lieu of donated foods for use by institutions which participate in the Child Care Food Program under Part 226 of this chapter.

(d) *Types of donated foods authorized for donations.* Nonresidential child care institutions which participate in the Child Care Food Program under Part 226 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14.

§ 250.50 Service institutions.

(a) *Distribution.* The distributing agency shall distribute donated foods only to those service institutions whose eligibility to receive donated foods for use in the Summer Food Service Program under Part 225 of this chapter has been confirmed in writing by the State agency or FNSRO administering the program, where applicable. Lists of participating service institutions which have been prepared by the administering State agency or FNSRO may serve as written confirmation of eligibility. Service institutions may employ food service management companies to conduct food service operations in accordance with Section 250.12(c) and Part 225 of this chapter.

(b) *Quantities and value of donated foods.* Distribution of donated foods to service institutions shall be made on the basis of the average daily number of meals to be served which meet the meal-type requirements prescribed in the regulations for the Summer Food Service Program for Children under Part 225 of this chapter as evidenced by the most recent written caseload factor information provided by the State agency or FNSRO administering the program by April 30 of each year.

(c) *Types of donated foods authorized for donation.* Service institutions which participate in the Summer Food Service Program for Children under Part 225 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, and section 14.

§ 250.51 Special Supplemental Food Program for Women, Infants, and Children.

(a) *Distribution.* At the request of the State agency responsible for administering the Special Supplemental Food Program for Women, Infants, and Children (WIC Program) under Part 246 of this chapter and with approval of the Department, donated foods may be made available for distribution to program participants. In instances when donated foods are made available, State agencies shall pay the Department using funds allocated to the State for the WIC Program for those donated foods which are provided to participants as part of the food package. Donated foods which are provided to participants in addition to the quantities authorized for the food package will be made available to the State agency free of charge.

(b) *Quantities and value of donated foods.* Distribution of donated foods to State agencies for the WIC Program shall be made on the basis of each State agency's quarterly estimate of need.

(c) *Types of donated foods authorized for donation.* State agencies participating in the Special Supplemental Food Program for Women, Infants, and Children under Part 246 of this chapter are eligible to receive donated foods under section 416 and section 32.

Subpart E—Where to Obtain Information

§ 250.60 Program information.

Interested persons desiring information concerning the program may make written request to the following Regional Offices:

(a) Northeast Region, Food and Nutrition Service, USDA, 33 North Avenue, Burlington, Massachusetts 01803, for the following States: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

(b) Mid-Atlantic Region, Food and Nutrition Service, USDA, Mercer Corporate Park, Corporate Blvd, CN 02150, Trenton, New Jersey 08650, for the following States: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia.

(c) Southeast Region, Food and Nutrition Service, USDA, 1100 Spring Street, NW, Atlanta, Georgia 30367, for the following States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

(d) Midwest Region, Food and Nutrition Service, USDA, 50 East Washington Street, Chicago, Illinois 60602, for the following States: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

(e) Mountain Plains Region, Food and Nutrition Service, USDA, 2420 West 26th Avenue, Room 400–D, Denver, Colorado 80211, for the following States: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

(f) Southwest Region, Food and Nutrition Service, USDA, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75202, for the following States: Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

(g) Western Region, Food and Nutrition Service, USDA, 550 Kearney Street, Room 400, San Francisco, California 94108 for the following States: Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory, and Washington.

(Catalog of Federal Domestic Assistance No. 10.550)

Dated: August 12, 1985.

Robert E. Leard,

Administrator.

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Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 884

Obstetrical-Gynecological Devices; Premarket Approval of the Contraceptive Intrauterine Device (IUD) and Introducer; Proposed Rule; Opportunity To Request Change in in Classification

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 84N-0375]

Obstetrical-Gynecological Devices; Premarket Approval of the Contraceptive Intrauterine Device (IUD) and Introducer

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; opportunity to request change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of product development protocol (PDP) for the contraceptive intrauterine device (IUD) and introducer, a medical device. The agency also is summarizing its proposed findings on (1) the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and (2) the benefits to the public from the use of the device. In addition, FDA is announcing an opportunity for interested persons to request the agency to change the classification of the device based on new information.

DATES: Comments by October 18, 1985; requests for change in classification by September 3, 1985.

ADDRESS: Written comments or requests for a change in classification are to be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Raju G. Kammula, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION:

Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: class I, general controls; class II, performance standards; or class III, premarket approval. As a general rule, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), and devices marketed on or after that date that are substantially equivalent to such devices, have been, or are being, classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Sections 501(f), 513, and 515(b) of the act (21 U.S.C. 351(f), 360c, and 360e(b)), taken together, establish a general requirement that a preamendments device that FDA has classified into class III is subject, in accordance with section 515 of the act, to premarket approval. As an alternative procedure for premarket approval, section 515(f) of the act provides for development of a PDP, the last stage of which is for FDA to declare that the PDP has been completed.) A preamendments class III device may be commercially distributed without a filed PMA or a notice of completion of a PDP until 90 days after FDA's promulgation of a final rule requiring premarket approval for the device. Also, such a device is exempt from the investigational device exemption (IDE) regulations (21 CFR Part 812) until the date stipulated by FDA in the final rule requiring premarket approval for that device. A device that was not in commerical distribution before May 28, 1976, or that has not been found by FDA to be substantially equivalent to such a device, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

Section 515(b)(2)(A) of the act provides that a proceeding for the promulgation of a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing (1) the proposed rule, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from use of the device, (3) an opportunity for the submission of comments on the proposed rule and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice either denying the request or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, promulgate a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate a proceeding to reclassify the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f) of the act mandates that a PMA or a notice of completion of a PDP for any such device be filed within 90 days of the date of promulgation of the final rule, or 30 months after final classification of the device, whichever is later. If a PMA or notice of completion of a PDP for such a device is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or notice of completion of a PDP has not been filed, and there is not any IDE in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334). Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333).

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." H. Rept. 94-853, 94th Cong., 2d Sess. 42 (1976).

Classification of the Contraceptive Intrauterine Device (IUD) and Introducer

In the Federal Register of February 26, 1980 (45 FR 12711), FDA issued a final rule (21 CFR 884.5360) classifying the IUD and introducer into class III. The

preamble to the proposal to classify the device (44 FR 19959; April 3, 1979) included the recommendation of the Obstetrics-Gynecology Devices Panel (formerly the Obstetrical and Gynecological Device Classification Panel) (the Panel), an FDA advisory committee, regarding the classification of the device. The Panel's recommendation included a summary of the reasons the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended under section 513(c)(2)(A) of the act that a high priority for the application of section 515 of the act be assigned to the IUD and introducer. The preamble to the final rule classifying the device advised that the date by which a PMA for the device (or notice of completion of a PDP) could be required was September 30, 1982, or 90 days after promulgation of a rule requiring premarket approval for the device, whichever occurred later.

In the **Federal Register** of September 6, 1983 (48 FR 40272), FDA puublished a notice of intent to initiate proceedings to require premarket approval of 13 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice describes the factors FDA takes into account in establishing priorities for initiating proceedings under section 515(b) of the act for promulgating final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. Using these factors, FDA has determined that the IUD and introducer, identified in § 884.5360(a), has a high priority for initiating a proceeding to require premarket approval. Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the IUD and introducer have an approved PMA or a PDP that has been declared completed.

Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the IUD and introducer within 90 days after promulgation of any final rule based on this proposal. An applicant whose device was in commercial distribution before May 28, 1976, or has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the IUD and introducer during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device, within 90 days of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d), the preamble to any final rule based on this proposal will stipulate that as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c) (1) and (2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any IUD and introducer (1) which is not legally on the market on or before that date or (2) which is legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for the IUD and introducer is not filed with FDA within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, commercial distribution of the device will be required to cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period to avoid interrupting investigations.

Description of Device

The IUD is a device used to prevent pregnancy. The device is placed high in the uterine fundus with a string extending from the device through the cervical os into the vagina. An introducer is considered part of the device. This generic type of device does not include IUD's that function by drug activity and therefore achieve their intended purpose through chemical action; such IUD's are subject to the new drug provisions of the act.

The proposed rule to require premarket approval of IUD's and introducers applies only to the IUD's and introducers that were being commercially distributed before May 28, 1976, and to devices introduced into commercial distribution since that date that have been found to be substantially equivalent to such IUD's. The two IUD's that currently meet these criteria and are therefore subject to this proposed rule are the Lippes Loop (manufactured by Ortho Pharmaceutical Corp., Rariton, NJ 08869), and the Saf-T-Coil (manufactured by Julius Schmid, Inc., Little Falls, NJ 07424, but not currently being marketed). Each of these devices is linear in design and is made of plastic materials. Based on the similarity in design and materials and the available published scientific evidence, FDA believes that the risks associated with these devices have been demonstrated to be relatively similar.

Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding (1) the degree of risk of illness or injury designed to be eliminated or reduced by requiring the IUD and introducer to have an approved PMA or a declared completed PDP and (2) the benefits to the public from the use of the device.

Degree of Risk

In response to increased incidence of septic spontaneous abortions associated with the Dalkon Shield, in October 1974, FDA's ad hoc Obstetrics and Gynecology Advisory Committee (composed of the then Panel on Review of Obstetrical and Gynecological Devices and the Obstetrics and Gynecology (Drugs) Advisory Committee), after an open hearing and review of all available data, concluded that IUD's have been shown by extensive use and studies to be a relatively safe and reliable means of contraception and that they compare favorably with the standard in this field, namely oral contraceptives (Ref. 47). Nevertheless, the ad hoc committee also stated that limited data on IUD's suggest that certain serious hazards related to IUD use may exist. The ad hoc committee concluded, therefore, that the potential hazards of all IUD's should be evaluated.

In 1979, the Panel considered the appropriate classification of the IUD. After reviewing all available literature on IUD's the Panel recommended that the device be classified into class III (44 FR 19960; April 3, 1979). The Panel based its recommendation, in part, on its conclusion that the safety and effectiveness of the device depends on its design and that it is not possible to establish an adequate performance standard for this generic type of device. The Panel also identified several risks to health associated with the use of this device. Since that time, FDA has

evaluated the risks associated with IUD use. FDA now believes that the following are significant risks associated with the use of the Lippes Loop and the Saf-T-Coil:

Pelvic inflammatory disease (PID). One of the most serious complications of the use of an IUD is infection of the internal female reproductive organs, commonly described by the term "pelvic inflammatory disease" (PID) (Refs. 4, 5, 14, 25, 45, and 48). The risk of PID is higher among IUD users, not only immediately after insertion, but also for as long as the IUD remains in place (Refs. 4, 26, and 48). The risk of PID for IUD users is 1.6 to 9.3 times higher than for nonusers (Ref. 6). Also, it has been suggested that the risk of PID is much higher in women with a history of previous PID and those who have more than one sex partner or those who frequently change partners (Ref. 31). The common sequel of PID includes loss of reproductive functions, increased incidence of ectopic pregnancy, and death (Ref. 20).

A wide variety of microorganisms are implicated as causative agents for PID (Refs. 10, 14, 16, 20, and 49). Both gonococcal and nongonococcal organisms have been isolated from PID patients. In addition, *Chlamydia trachomatis* organisms have also been implicated as major causative agents in acute salpingitis (Ref. 19).

Recently there has been an increase in the number of reports of *Actinomyces israelii*, an anerobic organism, infecting the female genital tract, particularly in women using an IUD. PID caused by *Actinomyces israelii* is clinically indistinguishable from other forms of PID (Refs. 9, 21, 22, and 37). Pelvic actinomycosis is a chronic progressive disease affecting the fallopian tubes, ovaries, and uterus (Refs. 30, 39, and 43). The onset of this disease is usually insidious and clinical symptoms may be absent until tubal involvement. If the infection is unrecognized or inadequately treated, loss of fertility may result and, in certain cases, the infection may be fatal (Ref. 28). Of particular concern is the recent observation that actinomyces organisms are found more frequently in the genital tracts of women who have used IUD's for many years than in the genital tracts of short-term users (Ref. 6).

Tubal infertility. Recent studies (Refs. 51 and 52) show that IUD use increases the risk of acute PID leading to tubal infertility. The risk of infertility varied with the type of IUD used.

Daling et al. studied the association between IUD use and tubal infertility by interviewing 159 nulligravid women with tubal infertility to determine their prior IUD use (Ref. 52). Their responses were compared with those of a matched group of women each of whom conceived her first child at the time the infertile women started trying to become pregnant. These authors found that the risk of primary tubal infertility in women who ever had used any IUD was 2.6 times that in women who never had used an IUD. The relative risk associated with the use of the Dalkon Shield was found to be 6.8 compared with 3.2 for the Lippes Loop or Saf-T-Coil and 1.9 for copper-containing (drug) IUD's.

Daling et al. also found that a history of IUD-related PID was associated with a relative risk of 3.0 for tubal infertility when compared with the risk in women who never had used an IUD and who did not have a history of PID. Further, they found that the relative risk of tubal infertility associated with an IUD in women who did not have a history of PID either before or after IUD use was 2.6 when compared with the risk in women who never had used an IUD and who did not have a history of PID. The authors concluded that their observations suggest that the absence of pelvic inflammatory symptoms cannot be relied on to indicate that a nulliparous woman who is using an IUD is not at increased risk of tubal infertility.

Cramer, et al. studied the association between IUD use and PID by comparing the contraceptive histories of 4,185 white women, of whom 283 were nulliparous women with primary tubal infertility, 69 women with secondary tubal infertility, and 3,833 women admitted for delivery (Ref. 51). The authors found the relative risk of tubal infertility associated with the use of any IUD before a first live birth was 2.0 times that in women who never had used an IUD. Users of the Dalkon Shield only had a relative risk of 3.3. Women who used the Lippes Loop or Saf-T-Coil only had a relative risk of 2.9 and women who used copper-containing IUD's had a relative risk of 1.6. In addition, these authors reported that there was not an increased risk of tubal infertility among women who used any type of IUD and who reported having only one sexual partner.

Perforation. Uterine perforation is the most serious complication associated with IUD insertion. Most perforations are believed to occur at the time of insertion. The reported incidence of uterine perforations for all IUD's including Lippes Loop and Saf-T-Coil varies from 0.0 to 8.7 per 1,000 insertions (Refs. 23, 38, and 50); although less frequent, partial perforation may also occur at the time of insertion. In this situation, the IUD may remain in the same relative position or it may ultimately pass completely beyond the confines of the uterus causing foreign body reactions, peritonitis, adhesions, and intestinal obstruction (Refs. 1 and 33).

A number of factors are related to the causation and frequency of perforation. Primary among these is the skill of the individual doing the insertion (Refs. 36 and 38). Both the level of training and the amount of experience have repeatedly been shown to be inversely related to the perforation rate (Refs. 1 and 33).

A number of anatomical abnormalities have been associated with an increased perforation rate and may be considered as relative contraindications. These include sharply anteflexed or retroverted positions of the uterus, severe cervical stenosis, certain congenital uterine abnormalities, and, according to some investigators, involution during the early postpartum period (Refs. 1, 7, 8, and 11).

Pregnancy. Pregnancy may occur either after an unnoticed expulsion or with the device still in place. Pregnancies occurring with an IUD in situ have been reported in the uterus, fallopian tubes, and ovaries (Refs. 12, 33, 34, and 35). For many years it was believed that the use of an IUD did not increase the incidence of extrauterine pregnancy (Refs. 27, 41, and 46). However, there are new data suggesting that the use of IUD's is associated with an increased risk of ectopic pregnancy and this increased incidence of ectopic gestations may be related to the increased frequency of PID in IUD users (Refs. 2, 13, 15, 33, 42, and 45). The risk of uterine and ectopic pregnancies associated with the use of the Lippes Loop and the Saf-T-Coil has been demonstrated to be similar (Ref. 35). The risk of midtrimester fetal loss increases tenfold when the pregnancy occurs with an IUD in situ (Refs. 17 and 18). Also, pregnancy with an IUD in situ increases the risk of septic midtrimester abortion endangering the life of the user (Refs. 34, 35, and 47).

Bleeding and pain. These side effects appear to be related in general to the size, shape, and position of the device relative to the size and shape of the uterine cavity (Ref. 24). Also, they have been found to depend to some degree upon the particular material of which the device is made (Ref. 18).

The bleeding associated with the IUD may be intermenstrual but more often occurs as an increase in menstrual flow. It is most common in the early months of use, often subsiding over a variable

period of time. It is believed to be due either to direct erosion into the endometrium by the device or to a generalized increase in vascularity of the entire endometrium which leads to localized hemorrhage or, perhaps, to both (Ref. 40).

Bleeding and pain occurring together have produced IUD removal rates varying from 4.0 to 14.7 per 100 women users (Ref. 33). However, the removal rates due to cramping or bleeding associated with the same device vary widely from one study to another (Refs. 3 and 29). The removal rates due to bleeding/cramping range between 9 to 12 for Lippes Loop and 4 to 15 for Saf-T-Coil per 100 women users (Ref. 33). The most serious problem that may result from increased blood loss is iron-deficiency anemia. However, recently, a case-control study of almost 4,000 women found that IUD users were at no greater risk of being hospitalized for severe vaginal bleeding than women using barrier methods or no contraceptive method. Among those hospitalized for heavy bleeding, those who were anemic were no more likely to use IUD's than those who were not anemic (Ref. 35).

Expulsion. IUD's are most likely to be expelled during the first month of use and particularly during the first post-insertion menstruation (Ref. 33). The frequency of expulsion with various devices ranges from 0.7 to 19.3 per 100 women users (Ref. 33). The expulsion rates for both Lippes Loop and Saf-T-Coil range between 7.3 to 19.3 per 100 women users (Ref. 33). However, expulsion rates tend to decline with increasing age, parity, and successive months of use (Refs. 3 and 33). Expulsion can be complete or partial. If complete expulsion of the IUD goes unnoticed, it places the woman at risk of pregnancy. The same applies to a partial displacement or expulsion into the lower uterine segment. Partial displacement may also result in an increased risk of ascending uterine infection from the vagina (Ref. 44).

Benefits of the Device

The latest study of contraceptive effectiveness showed an IUD failure rate of 4.2 per 100 married women aged 15 to 44. The failure rate was much lower among women who were in their 30's and who were careful in checking for expulsion. In women using IUD's to delay or space pregnancy, the failure rate was 5.6 percent (Ref. 34). The contraceptive effectiveness of all IUD's, including IUD's that function by drug activity, is roughly equal. In comparative studies, pregnancy rates for the loops and copper devices are within the same range—from 0 to 3.8 per 100 women at 1 year after insertion (Ref. 34). In the United States, IUD's are somewhat less effective than oral contraceptives and sterilization, but more effective than barrier methods (Table I).

TABLE I.—EFFECTIVENESS OF VARIOUS CONTRACEPTIVE METHODS [1]

Contraceptive method	Effectiveness—Pregnancies/100 women when used for 1 year
Sterilization	0.00.
Oral contraceptives	2 to 3.
IUD	1 to 6.
Condoms	3 to 36.
Diaphragm	2 to 20.

[1] Source: "Contraception: Comparing the Options," HEW Publication No. (FDA) 78-3069.

The primary advantage of IUD's is that the effectiveness of the device does not entirely depend on specific actions of the user (use effectiveness) such as taking the pill every morning or using a barrier method of contraception at each act of intercourse.

In general, morbidity and mortality rates associated with the use of IUD's remain low. In the United States, the current mortality rate is estimated to be somewhere between 1 to 10 deaths per million women-years of use (Ref. 47). IUD's are believed to be associated with higher morbidity but a lower mortality rate than oral contraceptives (Ref. 47). In terms of mortality, IUD's are about twice as safe as oral contraceptives used by young women without conditions predisposing them to circulatory disease and three to five times safer than oral contraceptives used by older women (Ref. 47). Thus, FDA believes that the IUD is a reasonable contraceptive choice.

Discussion of Risks and Benefits

FDA classified the IUD into class III in part because the safety and effectiveness of the device depends on its design; therefore, it is not possible to establish an adequate performance standard for this generic type of device. In addition, the Panel identified several risks to health associated with the use of this device (44 FR 19960). Since the time that FDA classified the device into class III, experience with the IUD throughout the world has demonstrated that within certain limits, clinical and individual factors may also have an impact on the safety and effectiveness of the device. The skill of the physician during insertion and the care and followup are essential to reduce certain risks of IUD use (Refs. 34 and 35). Based on the published scientific evidence (Ref. 35), FDA believes that with the improved techniques of insertion, training of personnel, and conscientious followup, many of the risks associated with IUD use are minimized and the effectiveness improved.

FDA has evaluated the probable risks and benefits to the public from use of the device and believes that the risks and benefits are well-documented for the Lippes Loop and the Saf-T-Coil except for four major safety issues—pelvic actinomycosis, tubal infertility, duration of IUD use, and the safety of wearing the device in situ after menopause. FDA is seeking further information on the association between tubal infertility and IUD use, and the relationship between the increased incidence of infection among IUD users, specifically actinomycosis, and long-term IUD use. Also, FDA does not have adequate information on how long a particular IUD should remain in situ, nor when an IUD should be removed because contraception is no longer necessary due to infertility, e.g., after menopause. FDA believes that this information exists but must be assembled in such a way as to enable FDA to assess long-term safety of the device.

FDA believes, therefore, that the IUD and introducer should undergo premarket approval to determine whether the risks of using the device are adequately balanced by its benefits. Applicants should submit any PMA in accordance with FDA's "Guideline for the Arrangement and Content of a PMA Application" and "Guideline for the Evaluation of Non-Drug IUD's" (available upon request from Raju G. Kammula, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910). As discussed previously in this section of the preamble the effectiveness of IUD's in general and the many risks associated with their use are well-documented in the published scientific literature with the exception of four major risks. The PMA, therefore, should contain a detailed discussion with supporting clinical studies of: (i) Pelvic actinomycosis; (ii) tubal infertility; (iii) the duration that the IUD should remain in situ; and (iv) the safety of leaving the IUD in situ when contraception is no longer indicated, e.g., after menopause, including a recommendation on whether, and under what conditions, the IUD should be removed.

In addition, the submission should contain all data and information on (i) the risks known to the applicant that have not been identified in this document, (ii) the specific effectiveness

of the IUD, and (iii) summaries of all existing preclinical and clinical data from investigations on the safety and effectiveness of the device for which premarket approval is sought.

Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(iv) of the act and § 860.132 of FDA's regulations governing classification of devices (21 CFR 860.132) to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. The legal standard governing reclassification under section 513(e) of the act and § 860.123 is discussed in detail in the preambles to FDA's proposed rules to reclassify daily wear spherical contact lenses consisting of rigid gas permeable plastic materials and daily wear optically spherical (soft) contact lenses from class III into class I (47 FR 53402, 53411; November 26, 1982).

A request for a change in the classification of the IUD and introducer is to be the in form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by September 3, 1985.

The agency advises that to assure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in classification of the IUD and introducer is submitted, the agency will by October 18, 1985, after consultation with the appropriate FDA advisory committee, and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and§ 860.130 of the regulations.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be reviewed by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has examined the economic consequences of this proposed regulation in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the proposal would not be a major rule as specified in the Order. The agency believes that only one or two firms will be affected by this proposed rule. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed rule would not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final rule based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 884

Medical devices, Obstetrical and gynecological devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 884 be amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for Part 884 is revised to read as follows:

Authority: Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)); 21 CFR 5.10; § 884.5360(d) also is issued under secs. 501, 515 and 520(g), 52 Stat. 1049–1050 as amended, 90 Stat. 552–559, 569–571 (21 U.S.C. 351, 360e, 360j(g)).

2. In Part 884, § 84.5360 is amended by adding new paragraph (d), to read as follows:

§ 884.5360 Contraceptive intrauterine device (IUD) and introducer.

* * * * *

(d) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (a date 90 days after date of promulgation of a final rule) for any IUD and introducer that was in commercial distribution before May 28, 1976, or that has on or before (a date 90 days after date of promulgation of a final rule) been found to be substantially equivalent to an IUD and introducer that was in commercial distribution before May 28, 1976. Any other IUD and introducer shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Interested persons may, on or before October 18, 1985, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before September 3, 1985, submit to the Dockets Management Branch written requests to change the classification of the IUD and introducer. Two copies of any requests are to be submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 18, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85–19725 Filed 8–16–85; 8:45 am]
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300-399	13.00	Jan. 1, 1985
400-End	12.00	Jan. 1, 1985
16 Parts:		
0-149	9.00	Jan. 1, 1985
150-999	10.00	Jan. 1, 1985
1000-End	13.00	Jan. 1, 1985
17 Parts:		
1-239	20.00	Apr. 1, 1985
240-End	14.00	Apr. 1, 1985
18 Parts:		
1-149	12.00	Apr. 1, 1985
150-399	19.00	Apr. 1, 1985
400-End	7.00	Apr. 1, 1985
19	21.00	Apr. 1, 1985
20 Parts:		
1-399	8.00	Apr. 1, 1985
400-499	16.00	Apr. 1, 1985
500-End	18.00	Apr. 1, 1985
21 Parts:		
1-99	9.00	Apr. 1, 1985
100-169	11.00	Apr. 1, 1985
170-199	13.00	Apr. 1, 1985
200-299	4.25	Apr. 1, 1985
300-499	20.00	Apr. 1, 1985
500-599	16.00	Apr. 1, 1985
600-799	6.50	Apr. 1, 1985
800-1299	10.00	Apr. 1, 1985
1300-End	5.50	Apr. 1, 1985
22	21.00	Apr. 1, 1985
23	14.00	Apr. 1, 1985
24 Parts:		
0-199	11.00	Apr. 1, 1985
200-499	19.00	Apr. 1, 1985
500-699	6.50	Apr. 1, 1985
700-1699	13.00	Apr. 1, 1985
1700-End	9.00	Apr. 1, 1985
25	18.00	Apr. 1, 1985
26 Parts:		
§§ 1.0-1.169	21.00	Apr. 1, 1985
§§ 1.170-1.300	12.00	Apr. 1, 1985
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§§ 1.501-1.640	12.00	[2] Apr. 1, 1984
§§ 1.641-1.850	11.00	Apr. 1, 1985
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300-499	11.00	Apr. 1, 1985
500-599	8.00	[1] Apr. 1, 1980
600-End	4.75	Apr. 1, 1985
27 Parts:		
1-199	18.00	Apr. 1, 1985
200-End	13.00	Apr. 1, 1985
28	13.00	July 1, 1984
29 Parts:		
0-99	14.00	July 1, 1984
100-499	6.50	July 1, 1984
500-899	19.00	July 1, 1985
900-1899	7.00	July 1, 1985
1900-1910	15.00	July 1, 1984
1911-1919	5.50	July 1, 1984
1920-End	14.00	July 1, 1984
30 Parts:		
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*200-699	6.00	July 1, 1985
700-End	13.00	July 1, 1984
31 Parts:		
0-199	8.50	July 1, 1985
200-End	9.50	July 1, 1984

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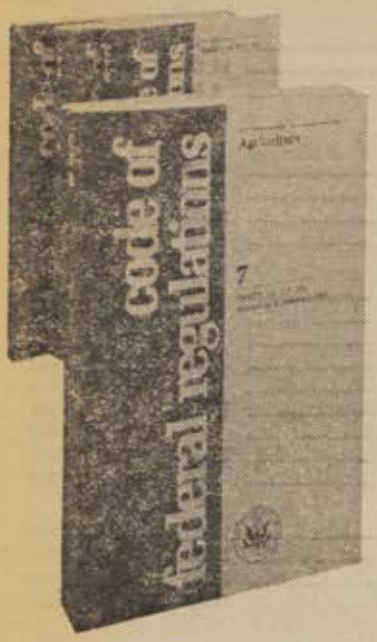

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