
Monday
January 27, 1986

Selected Subjects

Selected Subjects

Air Pollution Control

Environmental Protection Agency

Animal Drugs

Food and Drug Administration

Aviation Safety

Federal Aviation Administration

Communications Common Carriers

Federal Communications Commission

Electric Utilities

Federal Energy Regulatory Commission

Food Assistance Programs

Food and Nutrition Service

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Farmers Home Administration

Organization and Functions

Merit Systems Protection Board

Railroads

Interstate Commerce Commission

Surface Mining

Surface Mining Reclamation and Enforcement Office

Water Pollution Control

Environmental Protection Agency



FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

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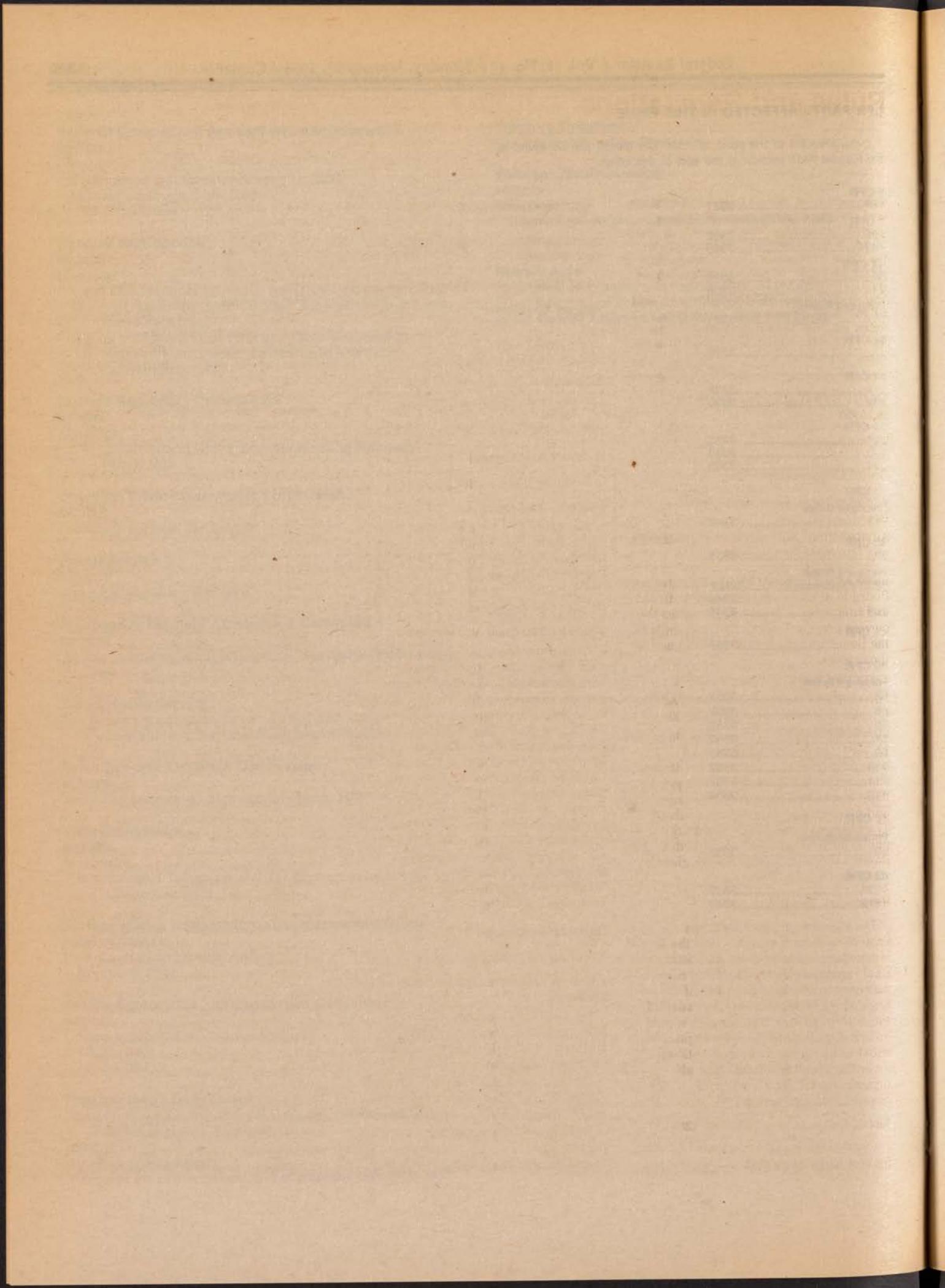
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Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1200

Board Organization

AGENCY: Merit Systems Protection Board.

ACTION: Final Rule revised organization and functional statements.

SUMMARY: The Merit Systems Protection Board is republishing its organizational and functional statements to reflect the current principal organizational units of the Board and the functions assigned to those units.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav (202) 653-8900.

SUPPLEMENTARY INFORMATION: On June 12, 1981, the Board published its organizational structure and functional statements (46 FR 30999). Subsequently, there have been certain title changes and other realignments have evolved. The changes here made provide the public current information regarding the Board's organization and more clearly state the functions assigned.

Regulatory Flexibility Act

The Chairman, Merit Systems Protection Board, certifies that the Board is not required to prepare an initial or final regulatory analysis of this rule pursuant to section 603 or 604 of the Regulatory Flexibility Act, because of the determination that this rule would have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects in 5 CFR Part 1200

Organization and functions (government agencies).

Therefore, Part 1200 is revised to read as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 1200—BOARD ORGANIZATION

Subpart A—General

Sec.

1200.1 The Board.

1200.2 The Chair, Vice Chair.

Subpart B—Offices of the Board

1200.10 Principal organizational units of the Board.

1200.11 The Special Counsel.

Subpart A—General

Authority: 5 U.S.C. 1101 et seq.

§ 1200.1 The Board.

The Merit Systems Protection Board ("The Board") is composed of three Members who are appointed by the President with the advice and consent of the Senate, and whose terms are for a period of seven years.

§ 1200.2 The Chair, Vice Chair.

One of the Members of the Board shall be appointed by the President, with the advice and consent of the Senate, to serve as the Chair and chief executive and administrative officer of the Board. From time to time, the President shall also designate one of the Members of the Board to serve as Vice Chair. In the absence or disability of the Chair, or when the Office of the Chair is vacant, the Vice Chair shall perform the functions vested in the Chair. During the absence or disability of both the Chair and the Vice Chair, or when their offices are vacant, the remaining Board Member shall perform the functions vested in the Chair.

Subpart B—Offices of the Board

Authority: 5 U.S.C. 1205 (g) and (i).

§ 1200.10 Principal organizational units of the Board.

(a) The Board is assisted in the performance of its statutory duties by its staff which is divided into the following principal organizational units:

- (1) Office of the Managing Director.
- (2) Office of the General Counsel.
- (3) Office of the Appeals Counsel.
- (4) Office of the Administrative Law Judges.
- (5) Office of the Clerk of the Board.

(6) Office of Merit Systems Review and Studies.

- (7) Office of the Comptroller.
- (8) Office of Legislative Counsel.
- (9) Office of Personnel.
- (10) Office of Equal Employment.
- (11) Regional Offices.

(b) *Office of the Managing Director.*

The Managing Director has responsibility for management of all agency operations and programs which support the work of the Board; including supervision of the Board's regional offices. The Managing Director, who reports directly to the Chair as chief executive officer has delegated authority to make all final decisions in the performance of the Board's personnel management, fiscal management, general administrative support services, procurement and contracts, personnel and document security and claims.

(c) *Office of the General Counsel.* This office provides legal advice to the Board and its staff. It represents the Board in proceedings involving Board employees and, where appropriate under 5 U.S.C. 1205(h), it represents the Board in court in civil actions brought in connection with any of its functions. It also reviews the rules and regulations of the Office of Personnel Management under 5 U.S.C. 1205(a)(4) to determine their validity on their face and as implemented by the agencies.

(d) *Office of Appeals Counsel.* This office has the following functions:

- (1) Processes petitions for review and interlocutory appeals including recommending appropriate action, and recommending reopenings by the Board;
- (2) Recommends appropriate action in cases instituted prior to the effective date of the Act; and

(3) Prepares proposed decisions for the Board in interlocutory appeals and actions brought under its appellate jurisdiction which have previously been adjudicated in the regional offices.

(e) *Office of the Administrative Law Judges.* The Administrative Law Judges are appointed by the Board under 5 U.S.C. 3105, to hear cases governed by the Administrative Procedure Act as well as other cases assigned by the Board, and to rule on discovery motions and subpoena requests.

(f) *Office of the Clerk of the Board.* The Office of the Clerk of the Board is responsible for establishing and maintaining systems for the timely processing, recording, and controlling of

cases; maintenance of a data base system to record and provide information on the status and disposition of cases; preparing and certifying official records; publishing final Board decisions; providing the initial response to Freedom of Information and Privacy Act requests; managing a formal system for the organization, maintenance, and disposition of Board records; and formulating and implementing library programs and policies which provide research assistance to Board staff and the public.

(g) *Office of Merit Systems Review and Studies.* The primary function of this office is to conduct special studies of the civil service and other merit systems under 5 U.S.C. 1205(a)(3) to determine whether they are free of prohibited personnel practices.

(h) *Office of the Comptroller.* This office carries out the financial management functions of the Board and provides general administrative services, including contracting and purchasing, security, internal audit and control functions.

(i) *Office of Legislative Counsel.* This office has primary two functions. First, it undertakes duties relating to Congress and other Executive agencies including: preparing testimony; responding to inquiries; and drafting legislative and bill reports. Second, it provides informational and training services for the Board, including responding to inquiries of the press and the public, assisting in the preparation and distribution of Board publications, and augmenting the Board's training capabilities through audio/visual and graphic services.

(j) *Office of Personnel.* This office is responsible for managing the internal personnel programs of the Board.

(k) *Office of Equal Employment.* This office has responsibility for developing and monitoring the implementation of all Equal Employment Opportunity programs and policies of the Board, including its internal affirmative action program, discrimination complaint proceedings, and providing advice and training for Board personnel in EEO related matters.

(l) *Regional Offices.* The Board has eleven regional offices located throughout the country as set forth in Appendix II of Part 1201. The primary function of the regional offices is to adjudicate cases arising under the Board's appellate jurisdiction in accordance with 5 CFR Part 1201 and to render initial decisions as set forth at 5 CFR 1201.111. Each regional office is headed by a Regional Director who reports to the Managing Director.

§ 1200.11 The Special Counsel.

The Special Counsel investigates and prosecutes prohibited personnel practices and certain other violations of Federal law. The Special Counsel's duties include bringing actions before the Board for adjudication. By law, the Office of the Special Counsel carries out its investigative and prosecutorial functions independent of the Board's adjudicatory role. A further statement and discussion of the functions and duties of this office is found at 5 CFR Part 1250.

Dated: January 17, 1986.

Herbert E. Ellingwood,
Chairman.

[FR Doc. 86-1596 Filed 1-24-86; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Summer Food Service Program (SFSP) regulations by: Revising the SFSP audit requirements to bring them into conformance with Federal law; prohibiting sponsors from claiming the costs of some disallowed meals as "operating costs"; and making various technical and clarifying amendments to the SFSP regulations. A proposed prohibition on sponsor claims for second meals served to children has been modified. The Department is limiting the number of second meals eligible for reimbursement to two percent of the number of first meals served to children for each type per claiming period. The program changes made by this final rule are necessary to bring the regulations into conformance with applicable laws and to improve program management.

EFFECTIVE DATE: February 26, 1986.

ADDRESS: Copies of all written comments on the proposed rule are available for review during normal business hours at 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura or Mr. James C. O'Donnell at the above address or by telephone at (703) 756-3620.

SUPPLEMENTARY INFORMATION: Classification

This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of \$100 million; will not cause a major increase in costs or prices for program participants, individual industries, Federal agencies, State or local government agencies or geographic regions; and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to the review, the Administrator of the Food and Nutrition Service has certified that this final rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this final rule have been approved by the Office of Management and Budget (OMB) under clearance 0584-0057.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 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, as appropriate, and any subsequent notices that may apply.)

Background

The Department published a proposed rule on November 4, 1985 (50 FR 45898) which included one statutory change affecting the SFSP audit requirements and four technical and clarifying amendments. The latter were intended to improve program management, remove internal inconsistencies in the program regulations, and delete obsolete requirements.

The Department received a total of 81 comments on the regulation from program sponsors, State agencies, Food and Nutrition Service (FNS) regional offices, members of Congress, advocacy groups, and private citizens. All comments were carefully considered and the issues raised by them are discussed in the preamble to this final rule.

Before analyzing the comments on each issue, it is appropriate to mention that several commenters questioned the adequacy of the comment period. The Department established a 30-day period during which interested parties could submit comments for consideration in the formulation of this final rule. While the Department understands commenters' desire to have additional time to respond, it is important to point out that Section 13 of the National School Lunch Act mandates a deadline for publication of the final Summer Food Service Program regulations which is 60 days after the required date of publication for the proposed regulation. Therefore a 30-day period was the maximum amount of time which could be allotted for comments.

Statutory Changes

The Department received 15 comments on the proposed changes to the SFSP audit requirements. Eight commenters were in favor of the proposed changes, three were opposed, and four apparently misunderstood the change or requested additional information. As explained in the preamble to the proposed rulemaking, the audit requirements set forth in the Single Audit Act (Pub. L. 98-502) and OMB Circular A-128 are generally non-discretionary. Therefore, the Department must comply with the law and the circular.

Nevertheless, several commenters raised questions about the implementation of organization-wide audits (OWA) which merit attention. One commenter raised several questions concerning sponsors which receive between \$25,000-\$100,000 in Federal funds each year. This commenter suggested that Pub. L. 98-502 and Circular A-128 provide for an option of an OWA or a program-specific audit for public sponsors receiving this level of funding. In fact, Pub. L. 98-502 and Circular A-128 allow such a sponsor the option of performing an OWA or an audit in accordance with the laws and regulations governing the programs in which the sponsor participates. This final rule requires that audits be performed in accordance with 7 CFR Part 3015 and OMB Circulars A-128 and A-110. Since the SFSP regulations do not set forth a separate program-specific audit requirement, public sponsors will be exempt from the OWA requirement only if they annually receive less than \$25,000 in Federal funds.

One commenter felt that the audit requirements for private sponsors were unclear, believing that OMB Circular A-110 does not require all private sponsors to have an OWA whereas the

Department's Uniform Federal Assistance Regulations (7 CFR Part 3015) do require OWAs. The Department does not believe that there is any difference between the audit requirements specified in Attachment F, paragraph 2(h) of OMB Circular A-110 and in § 3015.77. Therefore, like public sponsors, only private sponsors receiving less than \$25,000 per year in Federal funds are exempt from the OWA requirement.

Private sponsors receiving \$25,000 per year or more in Federal funds are required to follow Circular A-100 and Part 3015, both of which require OWAs to be conducted.

Several commenters felt that these audit requirements would be burdensome to small sponsors which receive all of their Federal funding from the SFSP. It should be pointed out, however, that the smallest public sponsors (those receiving less than \$25,000 in Federal funds per year) are exempt from the OWA requirements under OMB Circular A-128. Similarly, the same category of private nonprofit sponsors is exempted under authority given to the Department by OMB. Furthermore, the proposed regulation did not add new requirements for sponsors who should already have been conducting OWAs in accordance with OMB Circulars and Departmental regulations.

Finally, one commenter stated that implementation of the requirement might be difficult in States lacking jurisdiction over "privately funded entities". The Department does not believe that this is an issue since the audit requirements are based on Federal law (Pub. L. 98-502, the Single Audit Act of 1984). Any organization receiving Federal program funds agrees to comply with Federal audit requirements. Therefore, State monitoring of audit compliance should present no particular jurisdictional problems.

For these reasons, and those stated in the proposed rule, the proposed changes have been incorporated in the final rule.

Clarifying Amendments

I. Claims for Seconds and Disallowed Meals

The Department received seventy-six (76) comments on the proposal to disallow sponsor claims for "seconds" served to participating children. Four commenters favored the proposal, 70 were opposed, and two were unclear in their position. The arguments presented by some commenters have persuaded the Department to modify its proposed disallowance of claims for second meals. Specifically, these comments

pointed out that certain types of sites (especially "open", non-enrolled sites at playgrounds and other locations) would find it difficult to administer the program with no seconds whatsoever. Even with delivery just prior to the beginning of the meal period, they point out that a precise count of attendance is difficult to estimate. In addition, many of these sites either lack the refrigeration capacity to hold a large number of leftover meals until they could be returned to the sponsor or have no refrigeration whatsoever. Commenters also noted that local health regulations regarding the service of leftover meals vary widely. In some cases, health regulations prohibit serving any leftover meals (regardless of the site's refrigeration capabilities) due to the increased possibility of bacterial contamination. Finally, a number of the commenters argued that, in order to avoid ordering non-reimbursable meals, sponsors barred from claiming any seconds might be inclined to "under-order", which could result in eligible participants being turned away without receiving a meal.

The Department does not wish to promulgate a rule that would work an undue hardship on particular sponsors or localities, or which could result in eligible children not receiving meals. The stated objective of the SFSP is to provide meal service to all eligible children. However, Section 13 of the National School Lunch Act intends that sponsors serve one meal to each child in attendance. Therefore, although the Department accepts the commenters' contention that reimbursement for seconds should not be completely eliminated, the Department strongly believes that reimbursement for seconds must be curtailed to the maximum extent possible in order to ensure effective program management. The final rule establishes a two percent limit on the number of second meals which sponsors may claim for reimbursement in any claiming period (i.e., in any month). That is, in any month, sponsors may claim a number of seconds which does not exceed two percent of the number of first meals served to eligible children for each meal type (i.e., lunch, breakfast, supplement, or supper) during that month.

Such a limit is consistent with a number of comments which agreed with the need for greater control over seconds but stated that a total elimination of reimbursement for seconds was not reasonable. Approximately one-third of the commenters who addressed this issue provided data indicating that they had already limited seconds to a

low percentage of first meals served or stated their support for the establishment of a percentage limit on reimbursable seconds. Generally, commenters who provided such estimates stated that their seconds ranged from "less than two percent" to "less than ten percent" of first meals served. Most estimates clustered at the low end of this range, between two and five percent. The comments demonstrated that a two percent limitation on second meals is attainable. Based on these comments and data, the Department has established the two percent limit on seconds. The Department believes that a two percent tolerance for seconds constitutes an effective management tool for limiting program waste and responds to commenters' specific concerns regarding the difficulties involved in eliminating seconds altogether. Therefore, for the reasons stated in this preamble and the preamble to the proposed rule, the Department has established a two percent limit on the number of second meals which may be claimed for reimbursement.

It must also be emphasized that the two percent limit applies to the claiming period (month) and *not* to a single day's meal service. Reimbursable seconds may exceed two percent of firsts for one or more meal types on a given day, but may not exceed the two percent limit on seconds for any meal type over the course of the entire month. This will provide sponsors with continued flexibility in dealing with unanticipated day-to-day fluctuations in attendance.

Finally, the Department also wishes to reiterate that any claims for service of second meals should be closely monitored and are not to be approved by the State on a routine basis. The intent of § 225.19(d) is to firmly establish the objective of providing only one meal per child at each meal service. Sponsors and State agencies must work together to ensure that all possible efforts are being made to meet that objective. Sites or sponsors which routinely over-order and serve seconds are not taking positive action to limit seconds, and their second meals should be disallowed in accordance with §§ 225.19(d) and 225.13(e)(1).

Thirty-three (33) comments were received on the proposal to end the practice of allowing the cost of some disallowed meals as "operating costs". Five commenters approved of this change, 25 opposed it, and three were unclear as to their position or requested additional information. Most commenters who opposed this change did not present specific arguments

against it. The Department is implementing the prohibition on claiming meals as "operating costs".

Unlike the proposal to end reimbursement for seconds, this change involves either unserved meals and/or meals which fail to meet minimum nutritional requirements. The few commenters who specifically addressed this change objected on three different grounds. The first was that sponsors have no budget to pay for these meals. Although the Department recognizes that many sponsors have limited resources, sponsors are entitled to receive reimbursement for allowable costs only. These disallowed meals clearly should be few in number and should not be considered as allowable costs.

The second argument made was that a natural disaster could render a large number of meals unallowable. The Department sees no need to specifically address the possibility of natural disasters in these regulations. The chance of a disaster happening is remote and does not justify the retention of a provision with such a broad scope.

Finally, three commenters felt that it would be difficult to specifically identify "operating costs" under the proposed change. However, this change does not affect the current definition of operating costs in § 225.2 or the requirement that sponsors be reimbursed for the *lesser* of either actual operating costs or the per meal rates established under § 225.11(c)(6)(ii). The Department does not intend to establish new recordkeeping or monitoring requirements with this change and does not envision any difficulty in implementing this provision. For example, in calculating the lesser of operating costs or rates, sponsors which purchase meals need only deduct the actual cost of disallowed meals from total operating costs. Those which prepare their own meals are to deduct a reasonable proration of the cost of the disallowed meals compared to total costs.

II. Approved Level of Meal Service

Twelve (12) comments were received on this provision, which was intended solely to provide consistency between the language of §§ 225.7(j), 225.11(e), and 225.13(e)(3). All of these sections should state that it is never permissible to claim reimbursement for meals in excess of a site's approved level of meal service if such an approved level is required pursuant to § 225.7(j). Seven commenters were in favor of the proposed change, one was opposed, and four were uncertain about the provision's impact.

Three commenters appeared to be unaware that State agencies have been required to establish such "site caps" for each meal service at sites serving meals prepared by a food service management company. Two other commenters thought that the Department intended to eliminate sponsor-wide claims and institute site-specific claims reporting to the State. This is not the Department's intent. Rather, the Department anticipates that the State would monitor compliance with this provision in the normal course of conducting sponsor reviews. Such monitoring would only entail checking to see that daily meal counts do not exceed the site's approved level for each meal service.

Accordingly, the proposed changes governing approved levels of meal service are contained in this final rule, except that in the course of making this minor change in wording, § 225.11(d) was inadvertently removed. This paragraph is restored in the final regulation.

III. "Scope Reports"

All 11 commenters on the proposed change to eliminate State submission of "Scope Report" information agreed with the Department's deletion of § 225.10(b). Therefore, for the reasons stated in the proposed rule, this section is deleted in this final rule.

IV. Sponsor Eligibility

The Department received 15 comments on its proposal to clarify the circumstances under which a school food authority's sites are eligible to participate in the SFSP. Eight were in favor, three were opposed, and four expressed a desire for further clarification of the provisions of § 225.18 (b) and (c).

Two commenters felt that it should make no difference whether academic summer school sites receive reimbursement under the SFSP or the National School Lunch Program (NSLP) since both have the same purpose. Although both programs provide meals to children, section 13(a)(1) of the National School Lunch Act limits SFSP sponsors to those organizations which provide special summer or school vacation programs. The NSLP operates almost exclusively in schools when academic sessions are in progress. Schools which offer a food service during the summer exclusively to children who are enrolled in academic sessions are the type of organizations which participate in the NSLP. Schools which operate a food service for all children in the area of the school, regardless of whether or not they are

enrolled in summer school, are the type of organizations which participate in the SFSP. It was intended that the proposed rule would clarify this distinction.

Another commenter suggested that all SFSP school sites be limited to NSLP levels of reimbursement. However, Section 13 of the National School Lunch Act does not provide authority to alter the maximum reimbursement rates for any given class of sponsors. Consequently, schools are entitled to the full reimbursement rates available to other sponsors unless, of course, their actual costs are less than these rates.

Several commenters believed that the changes made to § 225.18(b) were actually proposed substantive changes in the degree of administrative control which government sponsors should have over their SFSP sites. This is not the case. The intent of the changes to § 225.18(b) was primarily to clarify the operation of the program at school sites. Government sponsors will continue to have the same responsibilities enumerated under the former § 225.18(b)(9).

For the reasons stated here and in the preamble, the proposed changes concerning this issue are incorporated in the final rule.

List of Subjects in 7 CFR Part 225

Food assistance programs, Grant programs—Health, Infants and children.

PART 225—[AMENDED]

Accordingly, the Department is amending 7 CFR Part 225 as follows:

1. The authority citation for Part 225 continues to read as follows:

Authority: Secs. 803, 807, 809, 816 and 817, Pub. L. 97-35, Secs. 203 and 206, Pub. L. 96-449, Secs. 5, 7, 10, Pub. L. 95-627, 95 Stat. 3603 (42 U.S.C. 1771); Sec. 2, Pub. L. 95-166, 91 Stat. 1325 (42 U.S.C. 1761); Sec. 7, Pub. L. 91-248, 84 Stat. 211 (42 U.S.C. 1859a), unless otherwise noted.

§ 225.8 [Amended]

2. In § 225.8, paragraph (a)(8) is amended by changing the words "§ 225.18(b)(9)" to read "§ 225.18(c)(3)".

§ 225.10 [Amended]

3. In § 225.10, paragraph (b) is removed, and paragraphs (c), (d), and (e) are redesignated as paragraphs (b), (c), and (d), respectively.

4. In § 225.11:

a. Paragraph (c)(4) is amended by changing the words "Section 225.10(c)" to read "Section 225.10(b)" and by removing the fourth and fifth sentences.

b. Paragraph (e) is amended by revising the second sentence to read as follows:

§ 225.11 Program payments

(e) * * * In reviewing a sponsor's claim, the State agency shall ensure that reimbursements for second meals are limited to the percentage tolerance established in § 225.19(d).

5. In Section 225.12, paragraph (a) is amended by removing the first sentence and replacing it with two new sentences to read as follows:

§ 225.12 Audit and management evaluation.

(a) State agencies shall arrange for audits of their own operations to be conducted in accordance with Office of Management and Budget Circular A-128 and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015). Unless otherwise exempt, sponsors shall arrange for audits to be conducted in accordance with Office of Management and Budget Circular A-128 or A-110, as applicable, and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015). * * *

§ 225.16 [Amended]

6. In Section 225.16, paragraph (c)(8) is amended by changing the words "Section 225.10(e)" to read "Section 225.10(d)".

7. In Section 225.18:

a. Paragraphs (b)(7)-(b)(9) are removed.

b. Paragraphs (c), (d), (e), (f), (g), (h), and (i) are redesignated (d), (e), (f), (g), (h), (i), and (j), respectively, and a new paragraph (c), "Special Circumstances", is added to read as follows:

§ 225.18 Requirements for sponsor participation.

(c) *Special Circumstances.* (1) If the sponsor is not a camp, it shall provide documentation that its food service will serve children from an area in which poor economic conditions exist, as defined in § 225.2. If the sponsor is a camp, it shall certify that it will collect information on participant's family size and income to support the sponsor's claim for reimbursement;

(2) If the sponsor administers the program at sites at which summer school is in session, the sponsor may offer the program only at sites which make meals available to children enrolled in summer school and all children in the area served by the site.

(3) Sponsors which are units of local, municipal, county or State governments shall be approved to administer the program only at sites over which the

sponsor has direct operational control. Such operational control means that the sponsor shall be responsible for: (i) Managing site staff, including such areas as hiring, terminating and determining conditions of employment for site staff; and (ii) exercising management control over program operations at sites throughout the period of program participation by performing the functions specified in § 225.19.

8. In Section 225.19, paragraph (d) is amended by removing the sixth sentence. In its place, two new sentences are added which read as follows:

§ 225.19 Operational responsibilities of sponsors.

(d) * * * In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, sponsors may claim reimbursement for a number of second meals which does not exceed two percent of the number of first meals served to children for each meal type (i.e., breakfasts, lunches, supplements, or suppers) during the claiming period. The State agency shall disallow all claims for second meals if it determines that the sponsor has failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. * * *

Dated: January 21, 1986.

Sonia F. Crow,

Acting Administrator.

[FR Doc. 86-1624 Filed 1-24-86; 8:45 am]

BILLING CODE 3410-30-M

Farmers Home Administration

7 CFR Part 1924

Internal Management Change for Notifying Farmer Program Borrowers Who Are in Monetary Default on Their Farmers Home Administration Loan Accounts

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation regarding management advice for Farmer Program borrowers. The intended effect is to allow the Administrator to establish the method of notifying Farmer Program borrowers that are behind schedule on FmHA loan payments and to inform the borrower of

alternative servicing options. The number of borrowers behind schedule on loan payments has increased substantially due to the depressed farm economy. This amendment is necessary to provide quick and more orderly processing of assistance to approximately 65,000 borrowers that are in default on FmHA loan commitments.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Edward Yaxley, Senior Loan Officer, Farm Real Estate and Production Division, Farmers Home Administration, USDA, Room 5449-S, Washington, DC 20250, Telephone: (202) 447-3646.

SUPPLEMENTARY INFORMATION: Classification: This final action has been reviewed under USDA procedures established in Departmental Regulations 1512-1, which implements Executive Order 12291 and has been determined to be exempt from these requirements because it involves internal agency management to allow the Administrator to establish the order of sending notices to farmer program borrowers that are in default on FmHA loan commitments. 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 comment is unnecessary.

Intergovernmental Consultation

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

- 10.404—Emergency Loans
- 10.406—Farm Operation Loans
- 10.407—Farm Ownership Loans
- 10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
- 10.416—Soil and Water Loans

For the reasons set forth in the final rule related to Notice to 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983) this action is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the 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.

Paperwork Reduction Act

This action does not change or add any information collection requirements in the regulations under the Paperwork Reduction Act and 5 CFR 1320.

Background

On November 1, 1985, FmHA published in the *Federal Register* (50 FR 45740) a final rule on Special Supervision of Delinquent and Problem Case FmHA Farm Borrowers which requires that all Farmer Program borrowers (except those under the jurisdiction of a bankruptcy court) that are more than \$100 behind schedule on their FmHA loan payments on December 31st will immediately be sent a Notice Of Intent to Take Adverse Action. It is now known that approximately 65,000 FmHA farmer program borrowers would immediately receive this notice. It has been determined that the impact of such a large number of farmers receiving the notice at one time would be detrimental to the agency and to rural communities. Therefore, the Agency has determined that a better approach is to establish an order for sending the notice based on the age of the delinquency. There are indications that the purpose of the notice is generally misunderstood. Many people are calling it a "foreclosure" notice. This is incorrect. The notice does not accelerate the account.

It does inform the borrower that the FmHA loan account is in default and informs the borrower of a number of servicing options such as rescheduling and deferral of payments. As time goes by people will become better informed of the purpose of the notice and this should reduce the apprehension of receiving the notice.

List of Subjects in 7 CFR Part 1924

Agriculture, Construction and repair, Loan programs—Agriculture.

Accordingly, Chapter XVIII, Title 7, Part 1924, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Management Advice to Individual Borrowers and Applicants

2. Section 1924.71 is revised to read as follows:

§ 1924.71 Delinquent borrowers.

The Finance Office will send each FmHA County Office a status report of farmer program borrowers accounts as of December 31 each year. Beginning December 31, 1985, borrowers that are behind schedule more than \$100 on their FmHA loan payments on the December 31 report will be considered delinquent (except those under the jurisdiction of a bankruptcy court). The Administrator will issue administrative notices (which will be available from any FmHA office) to inform field offices of the order for sending delinquent borrowers Form FmHA 1924-25, "Notice of Intent to Take Adverse Action" with attachments of Form 1924-26, "Borrower Acknowledgement of Notice to Take Adverse Action" and Form FmHA 1924-14, "Farmer Program Borrower Servicing Options Including Deferral and Borrower Responsibilities". The order for sending these forms will be based on the age of the delinquency. Cases involving litigation will be handled in accordance with the advice of the Office of General Counsel (OGC). Bankruptcies will be handled in accordance with § 1962.47 of Subpart A of Part 1962 of this chapter.

Dated: January 23, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86-1860 Filed 1-24-86; 9:09 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-156-AD; Amdt. 39-5224]

Airworthiness Directives; Cessna Model S550 and 552 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the *Federal Register* and makes effective as to all persons a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Cessna Model S550 and 552 airplanes by individual priority letters. This AD

removes approval for flight into icing conditions until certain inspections and modifications, as necessary, of the fluid ice protection system installation are accomplished. The AD is necessary because production errors have been identified, resulting in incorrect installation of the fluid ice protection system during manufacture of these airplanes.

DATE: Effective February 11, 1986.

This AD was effective earlier to all recipients of Priority Letter AD 85-25-10, issued December 17, 1985.

Compliance schedule as prescribed in the body of the AD.

ADDRESS: The applicable service information may be obtained from Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. This information may also be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Ralph W. Rissmiller, Jr., Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION: Cessna Aircraft Company has identified production errors in the Model S550 airplane which have resulted in incorrect installation of the fluid ice protection system during manufacture of certain of these airplanes. These errors affect anti-ice protection to the wings, engine, and horizontal stabilizer. This condition, if not corrected, can cause hazardous accumulation of ice on these areas during flight into icing conditions.

Cessna issued Alert Service Letter SLAS550-30-05 on December 17, 1985, which recommends that operators restrict flight into icing conditions and describes inspection and replacement of the fluid icing protection system on the left and right inboard and outboard wing and horizontal stabilizer installations.

Since this situation is likely to exist or develop on other airplanes of the same type design, Priority Letter AD 85-25-10 was issued on December 17, 1985, and made effective immediately to all known U.S. owners and operators of Cessna Models S550 and 552 airplanes. The AD removes approval for flight into icing conditions until certain inspections and modification, as necessary, of the fluid ice protection system installation, in accordance with the Cessna Alert Service Letter previously mentioned, are accomplished.

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

The reporting requirements of this AD are approved by the Office of Management and Budget under OMB No. 2120-0056.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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 (14 CFR 39.13) 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:

Cessna Aircraft Company: Applies to Cessna Model S550 and 552 airplanes, with unit numbers identified below, certificated in any category.

Model	Unit Numbers
S550.....	0001 thru 0048, 0061 thru 0075, 0077, and 0079.
552.....	-0001 thru -0015

Compliance is required as indicated, unless already accomplished.

To prevent hazardous accumulation of ice on the wing leading edge and horizontal stabilizer during flight in icing conditions, accomplish the following.

A. Prior to further flight:
1. Fabricate and install on the instrument panel, in clear view of the pilot, the following

placard, using letters of a minimum of 0.10 inch in height: "FLIGHT INTO KNOWN OR FORECAST ICING PROHIBITED," and operate the airplane accordingly.

2. Revise the Airplane Flight Manual, Section II, Operating Limitations-Operations Authorized to read: "This airplane is approved for day and night, VFR, IFR flight. Flight into known or forecast icing conditions prohibited." This may be accomplished by inserting a copy of this AD in the Airplane Flight Manual.

B. Within the next 15 flight hours or 15 days after the effective date of this AD, whichever occurs first, inspect and modify, as necessary, the fluid ice protection system left and right inboard wing installation in accordance with Accomplishment Instruction A. of Cessna Alert Service Letter SLAS550-30-05, dated December 17, 1985.

C. Within the next 25 flight hours or 30 days after the effective date of this AD, whichever occurs first, inspect and modify, as necessary, the fluid ice protection system left and right outboard wing and horizontal stabilizer installations in accordance with Accomplishment Instructions B. and C. of Cessna Alert Service Letter SLAS550-30-05, dated December 17, 1985.

D. Within 5 days after the required inspection, report any defects found to the Manager, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

E. The requirements of paragraphs A.1. and A.2., above, may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations (FAR) on any airplanes owned or operated by him. The person accomplishing these actions must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

F. The requirements of paragraphs A.1. and A.2., above, are terminated upon the accomplishment of paragraphs B. and C. of this AD.

G. Airplanes may be flown in accordance with FAR 21.197 and 21.199 to a location where the inspection/modification requirements of the AD can be accomplished.

H. Alternate means of compliance with this AD which provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, FAA, Central Region, 1803 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

This Amendment becomes effective February 11, 1986, as to all persons, except those persons to whom it was made immediately effective by Priority Letter AD 85-25-10, issued December 17, 1985.

Issued in Seattle, Washington, on January 17, 1986.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 86-1663 Filed 1-24-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-AEA-9]

Designation of Transition Area, Ocean City, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a transition area at Ocean City, NJ. A new VOR Runway 06 instrument approach procedure has been developed to the Ocean City Municipal Airport. The transition area is to provide protected airspace for aircraft departing/arriving under instrument flight rules (IFR).

EFFECTIVE DATE: 0901 GMT, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph Kelley, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION:

History

On September 13, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Ocean City Municipal Airport, NJ, to provide controlled airspace from 700 feet above the surface for IFR arrival/departure aircraft at Ocean City Municipal Airport (50 FR 41524). A new VOR Runway 06 instrument approach procedure has been developed to the Ocean City Municipal Airport. Interested parties were invited to participate in this proposed rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a new transition area at Ocean City Municipal Airport, NJ. A new VOR Runway 06 approach procedure has been developed to the Ocean City Municipal Airport. This action provides protected airspace for aircraft arriving/departing under instrument flight rules.

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

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

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

Ocean City, NJ [New]

That airspace extending upward from 700 feet above the surface within a five statute mile radius of the Ocean City Municipal, NJ, Airport (lat. 38°15'49"N., long. 74°36'28"W.); and within three miles each side of the Sea Isle VORTAC 051° radial extending from the five mile radius to 5.5 miles southwest of the airport, excluding that portion which overlaps the Woodbine, NJ, and Atlantic City, NJ, transition area, and that portion outside the continental limits of the United States.

Issued in Jamaica, New York, on December 26, 1985.

Timothy L. Hartnett,

Acting Director, Eastern Region.

[FR Doc. 86-1664 Filed 1-24-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM85-19-000]

Electric Utilities; Generic Determination of Rate of Return on Common Equity for Public Utilities

January 15, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Benchmark Rate of Return on Common Equity for Public Utilities.

SUMMARY: In accordance with § 37.5, the Commission issues the update to the "advisory" benchmark rate of return on common equity applicable to electric rate filings made during the period February through April 1986. This rate is set at 13.39 percent.

EFFECTIVE DATE: February 1, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Rattey, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426 (202) 357-8015.

SUPPLEMENTARY INFORMATION:

On December 26, 1985, the Commission issued a final rule which amended the quarterly indexing procedure for establishing and updating the benchmark rate of return on common equity applicable to electric rate filings.¹ Based on this amended procedure, the Commission determines that the benchmark rate of return on common equity applicable to rate filings made during the period February 1 through April 30, 1986 is 13.39 percent.

According to the amended § 37.9, the quarterly benchmark rates of return are set equal to ratemaking rates of return on common equity² subject to a 50 basis point limitation on the quarter-to-quarter changes. The ratemaking rates of return used in establishing the quarterly benchmarks are based on the average of the median dividend yield for the two most recent calendar quarters for a sample of 100 utilities and are calculated through a three step process. First, given the dividend yield value, the average effective required rate of return on common equity is determined using a

¹ Generic Determination of Rate of Return on Common Equity for Public Utilities, 51 FR 343 (January 6, 1986) (Docket No. RM85-19-000) (Final Rule) (Order No. 442).

² Defined in § 37.3 and calculated according to § 37.9(a)(3).

particular discounted cash flow model. Second, an adjustment is made to this effective required rate to reflect industry average annual flotation costs and obtain an estimate of the industry average cost of common equity. Finally, this cost estimate is adjusted through a formula that reflects the manner in which the rate base is determined for the cost of service to obtain the average ratemaking rate of return.

The median dividend yield for the sample of utilities for the third and fourth calendar quarters of 1985 are 9.14 and 8.92 percent, respectively, for an average of 9.03 percent. Using the latter yield produces an average effective required rate of return on common equity of 14.20 percent, an average cost of common equity of 14.24 percent, and an average ratemaking rate of return on common equity of 13.39 percent.³ Since this is the first quarter to which the results of the annual proceeding are applicable, the benchmark rate of return is set equal to this ratemaking rate of return. It is not subject to any limitation on the change from the last quarter. Thus the Commission finds the benchmark rate of return applicable to rate filings made from February 1, 1986 through April 30, 1986 is 13.39 percent. The attached appendix provides the underlying data on dividends and market prices supporting this update.

Generally, a rule becomes effective not less than 30 days after it is published in the Federal Register. A rule may become effective sooner if the agency finds that there is good cause to do so. 5 U.S.C. 553(d) (1982). The Commission finds good cause to make this rule effective February 1, 1986. Specifically, this notice is intended to supplement the generic rate of return rule announced in Order No. 442, issued December 26, 1985 and effective on February 1, 1986, by applying the method adopted in that rule to data which was not available until after January 1, 1986. In addition, the benchmark rate of return established by this rule is effective on an advisory basis only.

List of Subjects in 18 CFR Part 37

Electric Power Rates, Electric Utilities, Rate of Return.

In consideration of the foregoing, the Commission revises Chapter I, Title 18 of the Code of Federal Regulations, as

³ These values are determined according to the formulas given in § 37.9(a)(1) through (3). The basic data and computer programs used to derive these values have been placed in the public file. See "Source Data and Calculations Used in Final Rule and Quarterly Updates," dated January 1986.

set forth below, effective February 1, 1986.

By direction of the Commission,
Kenneth F. Plumb,
Secretary.

PART 37—[AMENDED]

1. The authority citation for Part 37 continues to read as follows:

Benchmark applicability period (i)	Expected dividend growth (g)	Flotation cost adjustment (f)	Current dividend yield (yr)	Average ratemaking rate of return (r)	Benchmark rate of return
2/1/86- 4/30/86	.045	.0004	.0903	.1339	.1339
5/1/86- 7/31/86	.045	.0004			
8/1/86-10/31/86	.045	.0004			
11/1/86- 1/31/87	.045	.0004			

Appendix

Note.—The following Appendix will not be printed in the Code of Federal Regulations.

Exhibit Number and Title

- 1—Initial Sample of Utilities
- 2—Utilities Excluded From the Sample for the Indicated Quarter Due to Either Zero Dividends or a Cut in Dividends for This Quarter or the Prior Three Quarters
- 3—Quarterly Dividend Yields for the Indicated Quarters for Utilities Retained in the Sample

Source of Data: Standard and Poor's Compustat Services Inc., Utility COMPUSTAT® II Quarterly Data Base.

EXHIBIT 1.—INITIAL SAMPLE OF UTILITIES

Utility	Ticker symbol
Allegheny Power System	AYP
American Electric Power	AEP
Atlantic City Electric	ATE
AZP Group Inc	AZP
Baltimore Gas & Electric	BGE
Black Hills Power & Light Co	BHP
Boston Edison Co	BSE
Carolina Power & Light	CPL
Central & South West Corp	CSR
Central Hudson Gas & Electric	CNH
Central Ill Public Service	CIP
Central Louisiana Electric	CNL
Central Maine Power Co	CTP
Central Vermont Pub. Serv.	CV
Cicorp Inc	CER
Cincinnati Gas & Electric	CIN
Cleveland Electric Illum	CVX
Commonwealth Edison	CWE
Commonwealth Energy System	CES
Consolidated Edison of NY	ED
Consumers Power Co	CMS
Dayton Power & Light	DPL
Delmarva Power & Light	DEW
Detroit Edison Co	DTE
Dominion Resources Inc-VA	D
Duke Power Co	DUK
Duquesne Light Co	DQU
Eastern Utilities Assoc	EUA
Empire District Electric Co	EDE
Fitchburg Gas & Electric Light	FGE
Florida Progress Corp	FPC
FPL Group Inc	FPL
General Public Utilities	GPU
Green Mountain Power Corp	GMP
Gulf States Utilities Co	GSU
Hawaiian Electric Inds	HE
Houston Industries Inc	HOU
Idaho Power Co	IDA

Authority: Federal Power Act, 16, U.S.C. 791a-825r (1982); Department of Energy Organization Act 42 U.S.C. 7101-7352 (1982).

2. In paragraph (d) of § 37.9, the table is revised to read as follows:

§ 37.9 Quarterly indexing procedure.

(d) * * *

EXHIBIT 1.—INITIAL SAMPLE OF UTILITIES—Continued

Utility	Ticker symbol
Illinois Power Co	IPC
Interstate Power Co	IPW
Iowa Electric Light & Power	IEL
Iowa Resources Inc	IOR
Iowa-Illinois Gas & Electric	IWG
Ipalco Enterprises Inc	IPL
Kansas City Power & Light	KLT
Kansas Gas & Electric	KGE
Kansas Power & Light	KAN
Kentucky Utilities Co	KU
Long Island Lighting	LIL
Louisville Gas & Electric	LOU
Maine Public Service	MAP
Middle South Utilities	MSU
Midwest Energy Co	MWE
Minnesota Power & Light	MPL
Morfana Power Co	MTP
Nevada Power Co	NVP
New England Electric System	NES
New York State Electric & Gas	NGE
Newport Electric Corp	NPT
Niagara Mohawk Power	NMK
Northeast Utilities	NU
Northern Indiana Public Serv	NI
Northern States Power-MN	NSP
Ohio Edison Co	OEC
Oklahoma Gas & Electric	OGE
Orange & Rockland Utilities	ORU
Pacific Gas & Electric	PCG
Pacificorp	PPW
Pennsylvania Power & Light	PPL
Philadelphia Electric Co	PE
Portland General Electric Co	PGN
Potomac Electric Power	POM
Public Service Co of Colorado	PSR
Public Service Co of Indiana	PIN
Public Service Co of New Hampshire	PNH
Public Service Co of New Mexico	PNM
Public Service Electric & Gas	PEG
Puget Sound Power & Light	PSD
Rochester Gas & Electric	RGS
San Diego Gas & Electric	SDO
Savannah Electric & Power	SAV
Scana Corp	SCG
Sierra Pacific Resources	SRP
Southern California Edison Co	SCE
Southern Co	SO
Southern Indiana Gas & Electric	SIG
St. Joseph Light & Power	SAJ
Teco Energy Inc	TE
Texas Utilities Co	TXU
TNP Enterprises Inc	TNP
Toledo Edison Co	TED
Tucson Electric Power Co	TEP
Union Electric Co	UEP
United Illuminating Co	UIL
Utah Power & Light	UTP
Utilicorp United Inc	UCU
Washington Water Power	WWP
Wisconsin Electric Power	WPC
Wisconsin Power & Light	WPL
Wisconsin Public Service	WPS

EXHIBIT 2—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

Ticker symbol and utility	Reason for exclusion
Year=85; Quarter=3	
CMS—Consumers Power Co.	Dividend rate was zero for the quarter ending Sept. 30, 1985.
CTP—Central Maine Power Co.	Dividend rate reduced in the quarter ending Dec. 31, 1984.
FGE—Fitchburg Gas & Elec Light.	Dividend rate was zero for the quarter ending Sept. 30, 1985.
GPU—General Public Utilities.	Dividend rate was zero for the quarter ending Sept. 30, 1985.
LIL—Long Island Lighting	Dividend rate was zero for the quarter ending Sept. 30, 1985.
MAP—Maine Public Service.	Dividend rate was zero for the quarter ending Sept. 30, 1985.
MSU—Middle South Utilities.	Dividend rate was zero for the quarter ending Sept. 30, 1985.
MTP—Montana Power Co.	Dividend rate reduced in the quarter ending Mar. 31, 1985.
PNH—Public Service Co of NH.	Dividend rate was zero for the quarter ending Sept. 30, 1985.
Year=85; Quarter=4	
CMS—Consumers Power Co.	Dividend rate was zero for the quarter ending Dec. 31, 1985.
FGE—Fitchburg Gas & Elec Light.	Dividend rate was zero for the quarter ending Dec. 31, 1985.
GPU—General Public Utilities.	Dividend rate was zero for the quarter ending Dec. 31, 1985.
KGE—Kansas Gas & Electric.	Dividend rate reduced in the quarter ending Dec. 31, 1985.
LIL—Long Island Lighting	Dividend rate was zero for the quarter ending Dec. 31, 1985.
MAP—Maine Public Service.	Dividend rate was zero for the quarter ending Dec. 31, 1985.
MSU—Middle South Utilities.	Dividend rate was zero for the quarter ending Dec. 31, 1985.
MTP—Montana Power Co.	Dividend rate reduced in the quarter ending Mar. 31, 1985.
NI—Northern Indiana Public Serv	Dividend rate was zero for the quarter ending Dec. 31, 1985.
PNH—Public Service Co of NH.	Dividend rate was zero for the quarter ending Dec. 31, 1985.

BILLING CODE 6717-01-M

ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

13:18 TUESDAY, JANUARY 7, 1986

YEAR-85 QUARTER-3

TICKER SYMBOL	PRICE, 1ST MONTH OF QTR-HIGH	PRICE, 1ST MONTH OF QTR-LOW	PRICE, 2ND MONTH OF QTR-HIGH	PRICE, 2ND MONTH OF QTR-LOW	PRICE, 3RD MONTH OF QTR-HIGH	PRICE, 3RD MONTH OF QTR-LOW	DIVIDENDS: ANNUAL RATE	ANNUALIZED DIVIDEND YIELD
AEP	24.875	22.250	23.500	21.250	21.875	19.875	2.260	10.148
ATE	29.250	25.750	27.375	26.000	28.500	25.625	2.580	9.526
AYP	34.000	29.000	31.000	29.125	31.250	28.125	2.780	8.877
AZP	28.125	25.000	25.250	23.875	24.875	22.625	2.720	10.898
BGE	23.313	20.188	22.125	20.000	22.500	20.625	1.700	7.922
BHP	34.875	32.625	34.750	32.125	36.250	33.750	1.920	5.637
BSE	44.125	36.000	40.250	37.000	40.375	38.250	3.240	8.237
CER	27.250	23.250	25.000	23.375	24.875	22.250	2.220	9.123
CEG	30.625	26.750	28.625	26.375	29.000	26.500	2.520	9.007
CIN	19.375	17.000	18.375	17.000	18.625	16.500	2.160	12.126
CIP	21.500	18.875	19.500	18.500	19.750	17.500	1.640	8.510
CNH	31.250	28.000	29.750	28.375	28.750	23.000	2.960	10.439
CNL	29.125	24.125	25.750	24.375	26.500	23.750	2.080	8.124
CPL	30.000	26.125	27.125	26.000	27.125	25.625	2.600	9.630
CSR	27.000	23.000	26.000	22.750	25.875	23.375	2.020	8.189
CV	21.750	18.125	21.125	18.625	21.125	19.250	1.900	9.500
CVX	23.875	21.750	23.375	21.250	23.000	21.250	2.520	11.242
CNE	32.875	29.625	31.500	29.000	31.000	28.250	3.000	9.877
D	34.125	28.625	31.375	29.250	31.125	28.375	2.720	8.924
DEW	26.625	22.750	24.625	23.125	24.875	22.750	1.920	7.959
DPL	20.250	17.750	18.500	17.250	18.750	16.750	2.000	10.984
DQU	17.500	16.125	17.250	16.125	16.500	14.375	2.060	12.628
DTE	17.875	15.750	16.750	15.125	16.500	14.000	1.680	10.500
DUK	35.875	30.750	32.625	30.625	32.875	30.000	2.600	8.093
ED	38.000	32.750	35.000	33.000	34.750	32.125	2.400	7.003
EDF	22.500	21.125	21.875	20.375	21.500	20.375	1.760	8.266
EUA	23.750	20.500	23.125	21.000	22.125	18.375	2.060	9.591
FPC	29.125	25.750	27.875	26.500	27.000	24.000	2.160	8.087
FPL	28.000	23.375	25.625	23.625	24.750	22.625	1.960	7.946
GMP	20.000	17.000	19.625	17.750	19.750	17.250	1.760	9.481
GSU	16.500	14.625	14.750	12.750	13.875	11.625	1.640	11.697
HE	25.375	22.125	22.875	20.250	22.125	20.250	1.640	7.398
HOU	29.500	27.000	28.000	26.750	27.750	25.000	2.640	9.659
IDA	24.500	20.000	21.375	20.000	21.875	20.125	1.720	8.070
IEL	21.500	18.625	21.000	19.000	21.000	18.750	1.900	9.510
IDR	37.750	33.000	34.500	33.000	34.250	32.250	3.080	9.026
IPC	27.500	23.375	25.625	23.250	24.750	22.375	2.640	10.785
IPF	40.000	33.375	36.250	33.625	36.125	32.750	3.040	8.599
IPW	22.750	19.625	20.750	19.750	20.250	19.000	1.900	9.335
IWO	35.000	30.250	31.625	29.875	31.500	29.875	2.740	8.739
KAN	41.375	34.500	38.125	35.250	37.000	33.875	2.960	8.068
KGE	19.125	17.375	18.500	14.375	15.375	10.250	2.360	14.905
KLT	24.500	22.375	23.500	20.000	22.375	18.000	2.360	10.830
KU	29.875	26.500	28.125	26.500	28.125	26.000	2.440	8.866
LOU	30.875	26.125	28.750	26.500	29.125	25.750	2.520	9.047
MPL	39.250	33.750	35.875	33.875	36.750	33.375	2.760	7.779
MME	32.250	27.750	30.125	26.750	30.875	28.000	2.760	9.422
NES	46.500	41.750	44.625	42.125	44.500	40.375	3.600	8.312
NGE	29.250	24.875	26.500	24.875	26.250	23.750	2.560	9.878
NI	12.875	11.375	12.125	11.125	12.500	10.625	1.560	13.253
HMK	21.875	19.500	20.500	18.875	20.000	17.500	2.080	10.554
NPT	17.375	16.375	17.125	15.625	16.500	15.500	1.500	9.137
NSP	51.875	46.125	48.250	45.750	48.875	44.875	3.520	7.391
HU	18.000	16.500	17.875	16.000	17.000	14.500	1.580	9.492
NVP	33.500	28.750	30.875	29.125	31.000	29.250	2.840	9.337
DEC	16.000	15.000	16.125	15.125	16.125	14.375	1.880	12.162
OGE	26.250	22.250	23.375	21.625	24.375	21.500	2.000	8.610
ORU	29.000	24.375	26.750	25.125	27.250	25.125	2.140	8.146
PCG	20.000	17.875	19.000	17.375	19.250	17.250	1.840	9.968
PE	16.625	15.250	16.500	14.750	15.000	14.000	2.200	14.328
PEG	32.375	27.750	31.000	28.000	30.875	26.625	2.840	9.648
PGN	21.625	18.625	20.125	19.125	20.375	17.875	1.900	9.682
PIN	10.125	8.250	9.250	8.625	9.250	8.625	1.000	11.085
PNM	29.500	25.500	27.375	26.000	27.875	26.250	2.880	10.634
PDM	34.000	28.000	32.125	29.125	31.375	27.500	2.160	7.116
PPL	27.875	24.500	26.250	24.375	26.375	23.500	2.560	10.047
PPW	31.625	27.000	29.500	27.250	29.750	27.375	2.320	8.070
PSD	17.000	14.875	15.750	14.500	14.875	13.000	1.760	11.733
PSR	24.125	20.250	22.250	20.375	22.125	20.375	2.000	9.266
RGS	24.875	21.500	23.000	21.750	22.875	19.750	2.200	9.869
SAJ	23.000	20.000	21.625	19.500	20.750	19.000	1.720	8.331
SAV	21.750	18.750	20.375	18.875	20.375	19.250	1.600	8.042
SCE	27.625	23.000	26.000	23.375	25.625	22.750	2.160	8.735
SCG	28.125	24.750	26.500	24.250	26.250	23.375	2.160	8.457
SDO	27.500	24.125	26.750	25.000	27.000	24.750	2.240	8.664
SIG	26.625	22.875	24.000	22.750	25.000	23.500	1.800	7.461
SO	23.125	20.375	21.250	19.750	20.500	18.875	1.920	9.300
SRP	19.875	17.000	18.500	17.375	18.125	17.375	1.660	9.201
TE	36.625	30.625	32.375	29.875	32.500	30.625	2.360	7.351
TED	21.250	19.125	20.875	19.125	20.750	19.125	2.520	12.574
TEP	43.625	36.875	40.625	37.250	40.125	37.000	3.000	7.643
TNP	21.625	18.125	19.875	16.625	18.250	15.750	1.250	6.803
TXU	31.875	28.000	29.875	28.375	29.000	25.875	2.520	8.740
UCU	27.000	24.375	25.000	24.000	24.750	21.875	1.400	5.714
UEP	19.750	18.125	19.625	17.750	19.375	16.875	1.840	9.901
UIL	22.625	18.500	21.875	20.375	22.125	20.250	2.000	9.543
UTP	26.875	23.250	25.500	23.750	24.250	22.750	2.320	9.510
WPC	40.500	34.375	36.250	33.500	37.000	33.875	2.480	6.905
WPL	40.375	35.375	37.625	34.375	36.625	34.500	2.760	7.566
WPS	39.250	36.125	39.000	37.000	38.875	35.750	2.860	7.593
WNP	24.500	22.125	23.500	21.750	22.125	21.000	2.480	11.022

EXHIBIT 3
Page 1 of 4

EXHIBIT 3
Page 2 of 4

ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

13:18 TUESDAY, JANUARY 7, 1986

TICKER SYMBOL	YEAR-85			QUARTER-4			DIVIDENDS: ANNUAL RATE	ANNUALIZED DIVIDEND YIELD
	PRICE, 1ST MONTH OF QTR-HIGH	PRICE, 1ST MONTH OF QTR-LOW	PRICE, 2ND MONTH OF QTR-HIGH	PRICE, 2ND MONTH OF QTR-LOW	PRICE, 3RD MONTH OF QTR-HIGH	PRICE, 3RD MONTH OF QTR-LOW		
AEP	23.000	20.500	24.250	22.000	24.625	22.500	2.260	9.907
ATE	28.000	26.000	29.250	27.625	29.750	28.000	2.580	9.180
AYP	31.500	28.250	33.125	29.500	34.125	32.000	2.700	8.594
AZP	25.625	22.750	26.625	23.875	27.375	25.500	2.720	10.755
BGE	22.625	20.375	24.500	22.000	25.500	23.000	1.700	7.391
BHP	33.750	32.125	35.500	33.000	40.750	35.250	1.920	5.476
BSE	39.875	36.625	42.250	39.375	46.250	41.125	3.440	8.407
CER	25.625	23.625	26.250	24.500	27.000	24.750	2.220	8.778
CES	27.875	26.250	29.000	27.250	30.875	28.125	2.520	8.927
CIN	18.750	17.500	19.625	18.125	22.250	19.000	2.160	11.245
CIP	19.375	17.375	19.875	18.625	20.500	19.375	1.640	8.547
CHH	27.000	24.625	28.375	26.625	30.500	27.250	2.960	10.805
CHL	27.500	24.875	27.750	26.125	30.250	27.000	2.080	7.633
CPL	27.875	25.125	29.125	27.000	30.875	28.250	2.600	9.272
CSR	25.750	24.125	26.625	25.125	28.125	25.625	2.020	7.800
CIP	13.375	12.375	13.250	12.750	14.375	13.000	1.400	10.616
CV	20.500	19.125	20.500	19.125	22.125	20.000	1.900	9.392
CVX	23.500	22.000	24.250	22.375	25.625	23.000	2.640	11.254
CWE	29.750	27.000	30.000	27.625	30.625	28.625	3.000	10.367
D	32.250	28.875	33.500	31.500	36.750	32.250	2.840	8.733
DEW	25.375	22.625	26.000	24.625	28.250	25.625	1.920	7.554
DPL	19.125	17.125	20.000	18.250	20.875	19.625	2.000	10.435
DOU	15.875	14.250	17.250	15.250	17.125	16.000	2.060	12.909
DTE	15.375	14.125	15.750	14.875	16.375	15.125	1.680	11.001
DUK	34.750	31.375	34.750	33.125	36.875	33.875	2.600	7.619
ED	36.250	33.500	36.625	34.250	39.625	36.125	2.400	6.655
EDE	21.375	20.375	23.375	21.125	24.500	22.875	1.880	8.442
EUA	22.875	20.375	24.625	21.500	26.875	24.500	2.060	8.782
FPC	28.625	25.375	30.125	27.250	31.000	26.375	2.280	8.107
FPL	25.750	22.875	28.875	24.625	29.000	24.750	1.960	7.545
GMP	19.250	17.125	19.750	18.500	21.000	19.500	1.760	9.173
GSU	13.125	12.125	15.500	12.250	13.875	12.500	1.640	12.397
HE	22.125	20.125	23.750	21.375	25.375	22.625	1.720	7.623
HOU	28.375	25.375	29.375	27.000	29.125	27.125	2.640	9.521
IDA	21.750	20.625	21.875	20.750	23.500	21.250	1.720	7.954
IEL	19.750	18.000	21.000	19.125	21.625	19.000	1.940	9.823
IOR	33.875	31.000	34.125	32.375	36.500	33.875	3.080	9.160
IPC	23.750	21.375	25.250	22.375	24.375	22.750	2.640	11.324
IPL	36.250	33.000	36.875	33.500	38.375	35.125	3.040	8.479
IPW	20.000	19.250	21.625	19.750	22.750	21.000	1.900	9.166
ING	32.500	30.375	33.875	31.625	36.250	33.500	2.740	8.298
KAM	38.125	35.000	39.250	37.125	41.375	38.000	2.960	7.760
KLJ	22.000	19.250	23.125	21.000	22.875	21.000	2.360	10.956
KU	28.250	26.125	29.500	27.750	31.250	27.625	2.440	8.587
LOU	27.750	26.000	29.500	27.375	32.250	28.375	2.520	8.829
MPL	37.750	33.500	39.000	36.750	40.750	30.375	2.760	7.592
MNE	30.625	28.625	31.125	29.750	33.125	30.750	2.760	9.000
MES	44.250	40.500	48.625	43.875	51.500	47.875	3.840	8.329
NGE	27.625	23.875	27.375	25.250	28.750	25.000	2.560	9.729
NMK	19.125	17.625	20.625	18.750	21.000	18.375	2.080	10.805
NPT	17.000	15.750	17.750	16.500	17.375	16.500	1.500	8.922
NSP	48.000	45.125	50.500	47.625	54.750	49.500	3.520	7.147
NU	16.875	14.500	18.000	16.625	18.750	17.000	1.580	9.317
NVP	31.625	30.125	32.375	31.375	33.625	31.500	2.840	8.939
DEC	15.875	14.500	16.500	15.375	16.750	15.250	1.880	11.968
OGE	24.250	22.000	25.000	23.625	27.625	24.375	2.000	8.170
ORU	26.250	24.875	27.625	25.500	28.250	26.625	2.140	8.069
PCG	18.750	17.375	19.875	18.250	20.375	19.250	1.840	9.695
PE	15.675	14.000	15.875	14.875	17.625	15.000	2.200	14.155
PEG	29.125	26.625	31.875	28.000	33.125	29.375	2.840	9.566
PGN	20.750	18.000	21.875	20.500	23.250	21.750	1.900	9.039
PTN	9.375	8.500	9.000	7.125	7.875	6.875	1.000	12.308
PNM	28.500	26.625	29.000	27.250	30.750	26.750	2.920	10.375
POM	31.375	28.500	33.125	31.250	34.750	32.125	2.160	6.781
PPL	26.000	23.750	27.875	25.625	29.000	26.000	2.560	9.706
PPW	29.250	27.875	29.875	28.125	31.500	29.000	2.400	8.199
PSD	15.125	14.000	15.375	14.625	18.375	14.750	1.760	11.447
PSR	21.125	18.875	20.875	19.875	21.875	20.125	2.000	9.776
RG5	22.125	19.125	23.125	21.625	24.625	22.500	2.200	9.915
SAJ	20.875	20.000	22.375	20.375	23.750	22.000	1.720	7.977
SAV	20.375	19.375	21.875	20.000	23.375	21.125	1.600	7.611
SCE	25.250	22.750	25.375	24.000	28.500	24.625	2.160	8.611
SCG	26.000	23.875	27.375	25.500	28.000	25.375	2.160	8.301
SDD	26.875	25.000	27.000	26.125	28.250	25.875	2.240	8.446
SIG	24.375	23.000	26.500	24.000	27.750	25.250	1.800	7.158
SO	20.625	19.125	21.750	20.125	23.750	20.500	2.040	9.724
SRP	18.125	17.250	19.125	17.875	20.250	18.500	1.660	8.963
TE	33.375	30.875	33.875	32.625	35.125	32.750	2.360	7.329
TED	20.250	19.375	21.375	19.875	22.125	20.125	2.520	12.280
TEP	40.250	37.375	43.625	39.750	45.500	41.750	3.000	7.251
THP	18.875	17.000	19.750	17.625	20.375	18.750	1.250	6.674
IXU	28.500	26.125	30.125	28.375	31.375	28.000	2.520	8.765
UCU	21.814	20.588	24.250	20.185	27.500	22.375	1.372	6.024
UEP	19.625	16.875	21.375	19.500	21.875	19.500	1.840	9.297
UIL	24.125	21.500	26.500	22.875	27.125	25.750	2.320	9.413
UTP	25.125	23.375	26.500	25.000	26.000	24.375	2.320	9.257
WPC	36.875	35.000	38.875	36.125	40.375	37.875	2.480	6.610
WPL	37.000	34.750	39.625	36.000	40.500	38.375	2.760	7.319
WPS	38.375	35.750	39.625	38.000	40.750	38.500	2.860	7.429
WNP	22.625	21.375	26.375	22.250	25.125	22.625	2.480	10.600

EXHIBIT 3
page 3 of 4

EXHIBIT 3
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N=90

[FR Doc. 86-1523 Filed 1-24-86; 8:45 am]

BILLING CODE 6717-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

(Docket No. 85N-0525)

Food Additives; Substances Generally Recognized as Safe; Editorial Amendments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that amended its regulations on food additives and food substances that are generally recognized as safe (50 FR 49535; December 3, 1985). This document corrects a typographical error.

FOR FURTHER INFORMATION CONTACT: Alan Rulis, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-28635 appearing on page 49535 in the issue of Tuesday, December 3, 1985, the following correction is made on page 49536: In the second column in the amendment for § 172.846 introductory text, "CAS Ref. No. 25-383-997" is corrected to read "CAS Reg. No. 25383-99-7".

Dated: January 17, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-1611 Filed 1-24-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

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 Seeco, Inc., providing for manufacture of premixes containing 5, 20, or 40 grams per pound each of tylosin and sulfamethazine. The premixes are subsequently used to make finished swine feeds.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers

Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Seeco Inc., Box 1014, North Highway 71, Willmar, MN 56201, is sponsor of a supplemental NADA 107-002 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of premixes containing 5, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine intended for use to make finished swine feeds. The NADA is presently approved for use of such premixes containing 10 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine. The resulting feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, preventing swine dysentery (vibriotic), and controlling swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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.

§ 558.630 [Amended]

2. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(3) by removing "011749" and in paragraph (b)(10) by inserting numerically the number "011749."

Dated: January 17, 1986.

Marvin A. Norcross,

Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-1459 Filed 1-24-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

(Docket No. N-85-1580; FR-2199)

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by increasing the limits for one high-cost area and adding the limits of seven designated high-cost areas to the list. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT:

For single family: Brian Chappelle, Director, Single Family Development Division, Room 9270, Telephone (202) 755-8720. For manufactured homes: Christopher Peterson, Director, Office of Title I Insured Loans, Room 9160, Telephone, (202) 755-6880; 451 Seventh Street, SW., Washington, DC 20410. (Telephones are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA) (12 U.S.C. 1710-1749) authorizes HUD to insure mortgages for single family residences (from one- to four-family

structures), condominiums, manufactured home lots, and manufactured homes, combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Act of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, section 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam, and Hawaii.

The Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, November 30, 1983) (1983 Act) further amended HUD's insuring authority. Of particular interest here are (1) the authorization to insure condominiums in high-cost areas at the same levels as the high-cost limits for one-family residences insured under section 203(b) of the National Housing Act; and (2) the authorization to increase maximum loan limits under the Title I loan insurance program for combination manufactured home and lot loans and for individual lot loans in high-cost areas, so long as the percentage increase in the maximum loan limit does not exceed the percentage increase made to a one-family residence in the area authorized under section 203(b) of the NHA.

The Department implemented these provisions of the 1983 Act in related documents published in the *Federal Register* on April 11, 1984 (see 49 FR 14332, 14335, 14336), effective May 22, 1984. These documents also amended the Department's rules to codify the procedure of announcing high-cost mortgage limits for single family residences, condominiums, combination manufactured homes and lots and manufactured home lots by notice in the *Federal Register* (see April 11, 1984 documents, amending 24 CFR 201.1504, 203.18b, 203.29, 234.27, and 234.49). In addition, the documents codified the procedure whereby a party may request an alternative mortgage limit (see the same sections cited above).

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features (see 49 FR 21520). First, there was no separate listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and

lots and individual lots, and specified the special high-cost amounts for manufactured homes, combination manufactured homes and lots and individual lots insured in Alaska, Guam, and Hawaii. And, third, it made changes to the list based on a new definition of "metropolitan area."

On December 6, 1984 (49 FR 47657), May 8, 1985 (50 FR 19341), July 24, 1985 (50 FR 30154), November 6, 1985 (50 FR 45993), and January 7, 1986 (51 FR 596), the Department published amendments to the "high-cost" mortgage amounts that added additional areas and further increased the limits of several previously designated high-cost areas.

This Document

Today's document adds Cumberland County, Maine; Kent County, Rhode Island; Bristol County, Rhode Island; Newport County, Rhode Island; Hillsborough County, New Hampshire; Los Alamos County, New Mexico and Coconino County, Arizona to the list of high-cost areas and further increases the limits of El Paso County, Colorado.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists any changes for single family residences insured under sections 203(b), and 234(c) of the National Housing Act.

Accordingly, the Commissioner hereby amends the list of high-cost mortgage limits by adding the limits for Cumberland County, Maine; Kent County, Rhode Island; Bristol County, Rhode Island; Newport County, Rhode Island; Hillsborough County, New Hampshire; Los Alamos County, New Mexico; and Coconino County, Arizona and further increasing the limits for El Paso County, Colorado, as set forth in Part II of the following Table:

National Housing Act High-Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. Section 2(b)(1)(D). *Combination manufactured home and lot (excluding Alaska, Guam, and Hawaii)*: To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by 80. For example, Cumberland County, Maine, has a one-family limit of \$76,000. The combination home and lot loan limit for Cumberland County is $\$76,000 \times .80$ or \$60,800.

B. Section 2(b)(1)(E). *Lot only (excluding Alaska, Guam, and Hawaii)*:

To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Cumberland County, Maine, has a one-family limit of \$76,000. The lot only loan limit for Cumberland County is $\$76,000 \times .20$, or \$15,200.

C. Section 2(b)(2). *Alaska, Guam, and Hawaii limits*: The maximum dollar limits for Alaska, Guam, and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1). Accordingly, the dollar limits for Alaska, Guam, and Hawaii are as follows:

1. For manufactured homes, \$56,700. ($\$40,500 \times 140\%$).
2. For combination manufactured homes and lots: \$75,600. ($\$54,000 \times 140\%$).
3. For lots only: \$18,900. ($\$13,500 \times 140\%$).

II. Title II: Updating of FHA Sections 203(b), 234(c) and 214 Area-Wide Mortgage Limits

REGION I

HUD FIELD OFFICE—BANGOR OFFICE

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Cumberland County	\$76,000	\$85,500	\$104,000	\$120,500

HUD FIELD OFFICE—PROVIDENCE OFFICE

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Kent County	\$70,650	\$79,550	\$96,650	\$111,550
Bristol County	\$81,450	\$91,750	\$111,450	\$128,600
Newport County	\$85,850	96,700	\$117,500	\$135,550

HUD FIELD OFFICE—MANCHESTER OFFICE

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Hillsborough County	\$90,000	\$101,300	\$122,650	\$142,650

REGION VI

HUD FIELD OFFICE—ALBUQUERQUE OFFICE

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Los Alamos County	\$90,000	\$101,300	\$122,650	\$142,650

REGION VIII

HUD FIELD OFFICE—DENVER OFFICE

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
El Paso County.....	\$85,500	\$96,300	\$117,000	\$135,000

REGION IX

HUD FIELD OFFICE—PHOENIX OFFICE

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Cococino County.....	\$75,900	\$85,450	\$103,850	\$119,850

Dated: January 15, 1986.

Janet Hale,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 86-1597 Filed 1-24-86; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2948-6]

Approval and Promulgation of Air Quality Implementation Plans; Arizona Carbon Monoxide (CO) and Total Suspended Particulates (TSP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice announces EPA's final disapproval of the State Implementation Plan (SIP) for carbon monoxide (CO) and total suspended particulates (TSP) that Arizona submitted in 1979 and 1980 for the purpose of meeting the requirements of Part D (Sections 171-178) of the Clean Air Act (CAA or "the Act"), as that plan relates to certain subareas of the parts of Pima County, Arizona that EPA has designated as nonattainment for CO and TSP, respectively. As to those subareas, this action supersedes EPA's July 7, 1982 finding that those submittals conditionally satisfy the requirements of Part D (47 FR 29532). This disapproval will result in the imposition of a moratorium on the construction and modification of major stationary sources of CO and TSP in those subareas of the Pima County CO and TSP nonattainment areas, respectively, effective thirty days from today. (See 40

CFR 52.24 and section 110(a)(2)(I) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(I).)

These actions are based on the State's failure to submit revisions to the New Source Review (NSR) regulations for those subareas in response to the condition EPA established in the 1982 conditional approval. In a parallel notice, EPA is proposing to approve revised NSR rules that the State did submit, as they apply to the subareas of the Pima County CO and TSP nonattainment areas not covered by today's action. Finally, EPA will describe in separate proposal notices some additional deficiencies in the Pima County Part D plan for CO that the State must also remedy before EPA will lift the construction moratorium on CO sources described in today's notice.

EFFECTIVE DATE: This action is effective February 26, 1986.

FOR FURTHER INFORMATION CONTACT:

Wallace D. Woo, Chief, State Liaison Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105. Telephone: (415) 974-7634. (FTS) 454-7634.

SUPPLEMENTARY INFORMATION: The CAA amendments of 1977 required States to revise their SIPs generally by January 1, 1979 for all areas that had not attained the National Ambient Air Quality Standards (NAAQS). The 1979 SIP revisions were to provide for attainment of the NAAQS generally by December 31, 1982.

EPA designated certain areas in Pima County (hereinafter simply "Pima County" or "the County") as nonattainment for CO and TSP, respectively, in 1978. The State submitted various elements of Pima County's Nonattainment Area Plan for CO and TSP on March 20, March 27, and October 9, 1979, and on February 28, 1980. The plan consisted of a control strategy and regulations intended to provide for attainment of the CO and TSP NAAQS in the area by the end of 1982.

Included in the submittals were rules that Pima County had developed to meet the New Source Review (NSR) requirements of Part D of the Act. Those rules, together with several Arizona State NSR rules that EPA had conditionally approved on May 5, 1982, comprised the complete NSR permit program for Pima County. (For further information, see the Federal Register notices of July 23, 1980, May 5, 1982, and July 7, 1982.)

As discussed in the materials accompanying EPA's 1982 rulemaking on the NSR rules, the permit program of the Pima SIP contained several

inconsistencies with EPA's current NSR regulations, set forth at 40 CFR 51.18(j). See also the Federal Register notices at 45 FR 31307 (May 13, 1980), 45 FR 52676 (August 7, 1980), and 46 FR 50766 (October 14, 1981). Based on assurances from the pollution control agencies for Arizona and Pima County that they would submit materials to correct these deficiencies and the belief that the deficiencies would not significantly affect the critical elements of the Pima County NSR rules during the expected short "interim" period of conditional approval, EPA conditionally approved the Pima NSR rules in the July 7, 1982 notice (47 FR 29532). EPA stated in that notice that, to satisfy the condition, the State and County needed to submit by November 4, 1982 NSR rules that met the terms of EPA's amended NSR regulations.

Arizona recently submitted to EPA revised NSR rules that Pima County had adopted. Those rules, however, apply only to areas that Pima County, as a matter of local law, has designated nonattainment for the relevant pollutant. They do not apply to areas that the County has designated attainment but that EPA continues to designate as nonattainment under the Agency's regulations at 40 CFR Part 81. Currently, the areas that EPA has designated nonattainment for CO and the areas that EPA has designated nonattainment for TSP do not coincide geographically with the areas that Pima County has designated nonattainment for CO and TSP, respectively.¹ As to the subareas that both Pima County and EPA have designated nonattainment for CO and the subareas that both have designated nonattainment for TSP, EPA is proposing in a parallel notice to find that the Pima County NSR rules meet the 1982 NSR condition described above. However, since the Pima County NSR rules do not apply to the subareas with conflicting designations, EPA must conclude that it still has received no revised NSR rules governing those subareas. Thus, EPA must now conclude that the State has not met the condition of EPA's July 7, 1982 approval of the Part D Pima County SIP for TSP and CO as that condition relates to the subareas with conflicting designations. Because of the extended period of time that has elapsed since EPA established the condition, the Agency can no longer regard this NSR deficiency as minor. For

¹ The subarea for which the local and EPA CO designations differ and the subarea for which the local and EPA TSP designations differ are described in the Code of Federal Regulations language appearing at the end of this notice.

that reason, EPA is finding today that the CO and TSP nonattainment area plans for those subareas do not meet the requirements of Part D. Based on that finding, EPA is today rescinding its 1982 conditional approval of the CO and TSP plans as they apply to those subareas and substituting a disapproval of the Part D Pima County TSP and CO SIP. Consistent with section 110(a)(2)(I) of the CAA and EPA's general guidance on failure to meet germane conditions on approval of Part D SIPs (see 48 FR 50686 (November 2, 1983)), EPA also announces that the moratorium on major source construction and modification that appears at 40 CFR 52.24(a) will apply thirty days from the publication of this notice to TSP and CO sources in those TSP and CO subareas, respectively. EPA is taking these actions without further notice because the Agency gave adequate notice in its July 7, 1982 action that it regarded November 4, 1982 as the date by which State needed to submit revised NSR rules to avoid the construction moratorium.²

The finding that the 1979 SIP for CO and TSP does not satisfy Part D of the Act as to those Pima County subareas and the consequent imposition of the section 110(a)(2)(I) construction moratorium in those subareas does not remove from the SIP any control measures and NSR rules that EPA has previously approved. Those provisions remain in the SIP because they are helpful to attainment of the CO and TSP NAAQS.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities. As noted above, a moratorium on the construction and modification of certain major stationary sources goes into effect in certain areas of the State by virtue of the disapproval here. EPA does not have sufficient information to determine the impacts such a moratorium may have on small entities, because it is difficult to obtain reliable information on future plans for business growth. Even if this action were to have a significant impact, however, the Agency could not modify its action. Under the Clean Air Act, the

² EPA has already proposed to approve the State's request to redesignate from nonattainment to attainment the CO nonattainment subarea described in the previous footnote. Under section 110(a)(2)(I) of the Act, final approval of that redesignation would lift the construction moratorium as to CO sources in that subarea. EPA intends to take final action on that request in the near future.

imposition of a construction moratorium plan for a nonattainment area fails to meet the requirements of Part D of the Clean Air Act.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by sixty days from the date this notice appears in the *Federal Register*. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Particulate matter, Intergovernmental relations.

Dated: December 16, 1985.

Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart D—Arizona

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.123 is amended by revising paragraph (c) to read as follows:

§ 52.123 Approval status.

(c) With the exceptions set forth in this subpart, the Administrator approves the plan with respect to Part D, Title I of the Clean Air Act, as amended in 1977, for the nonattainment areas listed in this paragraph.

(1) Maricopa County Urban Planning Area for CO.

(2) For CO, the portion of the Tucson CO Air Planning Area falling both within the area described by connecting the geographic points in the order listed below in this paragraph and within the townships described below in this paragraph:

Latitude 32°38.5' N, Longitude 111°24.0' W
Latitude 32°26.5' N, Longitude 110°47.5' W
Latitude 32°12.5' N, Longitude 110°32.5' W
Latitude 31°49.5' N, Longitude 110°25.5' W
Latitude 31°42.0' N, Longitude 110°50.5' W
Latitude 31°52.5' N, Longitude 111°12.5' W
Latitude 31°24.5' N, Longitude 111°29.0' W

T9S, R9-11E
T10S, R9-13E
T11S, R11-14E
T12S, R11-14E
T13S, R11-16E
T14S, R11-16E
T15S, R11-16E
T16S, R12-16E
T17S, R19E

T16S, R19E
T20S, R14-15E

Except for those portions of the Coronado National Forest and the Saguaro National Monument contained therein.

(3) For TSP, the portion of the Tucson TSP Air Planning Area falling both within the area described by connecting the geographic points in the order listed below in this paragraph and within the townships and sections described below in this paragraph:

Latitude 32°38.5' N, Longitude 111°24.0' W
Latitude 32°26.5' N, Longitude 110°47.5' W
Latitude 32°12.5' N, Longitude 110°32.5' W
Latitude 31°49.5' N, Longitude 110°25.5' W
Latitude 31°42.0' N, Longitude 110°50.5' W
Latitude 31°52.5' N, Longitude 111°12.5' W
Latitude 31°24.5' N, Longitude 111°29.0' W
(and return to initial point)

T9S, R9-11E
T10S, R9-13E

T13S, R13E: sections 5, 8-10, 13-17, 20-28, 33-36, 6 (NE and SE quarters only) and 7 (NE and SE quarters only)

T13S, R14E: sections 19-21, 26-35
T14S, R13E: sections 1-3, 10-14, 23-25
T14S, R14E: sections 3-9, 17-19, 30
T17S, R19E
T18S, R19E
T20S, R14-15E

3. Section 52.123 is amended to add new paragraphs (e)(2) and (e)(3) as follows:

§ 52.123 Approval status.

* * * * *

(e) * * *

(2) The following portion of the Tucson CO Air Planning Area: The area described by connecting the following geographic points in the order listed below:

Latitude 32°38.5' N, Longitude 111°24.0' W
Latitude 32°26.5' N, Longitude 110°47.5' W
Latitude 32°12.5' N, Longitude 110°32.5' W
Latitude 31°49.5' N, Longitude 110°25.5' W
Latitude 31°42.0' N, Longitude 110°50.5' W
Latitude 31°52.5' N, Longitude 111°12.5' W
Latitude 31°24.5' N, Longitude 111°29.0' W
(and return to initial point)

Excluding the area within the following townships:

T9S, R9-11E
T10S, R9-13E
T11S, R11-14E
T12S, R11-14E
T13S, R11-16E
T14S, R11-16E
T15S, R11-16E
T16S, R12-16E
T17S, R19E
T18S, R19E
T20S, R14-15E

But including those of the Coronado National Forest and the Saguaro National Monument within the townships.

(3) The following portion of the Tucson TSP Air Planning Area: The area described by connecting the following geographic points in the order listed below:

Latitude 32°38.5' N, Longitude 111°24.0' W
 Latitude 32°26.5' N, Longitude 110°47.5' W
 Latitude 32°12.5' N, Longitude 110°32.5' W
 Latitude 31°49.5' N, Longitude 110°25.5' W
 Latitude 31°42.0' N, Longitude 110°50.5' W
 Latitude 31°52.5' N, Longitude 111°12.5' W
 Latitude 31°24.5' N, Longitude 111°29.0' W
 (and return to initial point)

Excluding the area within the following townships:

T9S, R9-11E
 T10S, R9-13E
 T13S, R13E: sections 5, 8-10, 13-17, 20-28, 33-36, 6 (NE and SE quarters only) and 7 (NE and SE quarters only)
 T13S, R14E: sections 19-21, 26-35
 T14S, R13E: sections 1-3, 10-14, 23-25
 T14S, R14E: sections 3-9, 17-19, 30
 T17S, R19E
 T18S, R19E
 T20S, R14-15E

4. § 52.124 is amended by revising paragraph (a)(2) to read as follows:

§ 52.124 Part D Conditional Approval.

(a) * * *

(1) * * *

(2) As to only the areas listed in § 52.123(c)(2) and (3) of this subpart, the Tucson Air Planning Area portion of the Arizona SIP is approved as satisfying Part D requirements for CO and TSP, respectively, provided that, by November 4, 1982, the NSR regulations must be revised to meet the requirements in EPA's amended regulations for NSR [40 CFR 51.18(j)].

[FR Doc. 86-1688 Filed 1-24-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 95

Automatic Data Processing Equipment and Services; Conditions for Federal Financial Participation

AGENCY: Office of the Secretary, HHS.

ACTION: Interim Final Rule With Comment Period.

SUMMARY: On November 19, 1984 the Department of Health and Human Services published a Notice of Proposed Rule Making (NPRM) on Automatic Data Processing—Conditions for Federal Financial Participation in the Federal Register (49 FR 45617). Those proposed regulations are applicable to the

administration of Public Assistance programs under Titles I, IVA, B, C, D, and E, X, XIV, XVI (AABD), XIX of the Social Security Act.

This Interim Final Rule establishes the conditions and the procedures under which a State can obtain consideration for Federal Financial Participation (FFP) in emergency and certain other circumstances for the acquisition of Automatic Data Processing (ADP) equipment or services in affected programs. It does not deal with all provisions contained in the NPRM.

The remaining provisions of the NPRM that are not published as part of the Interim Final Rule will be published by DHHS at a later date.

DATES: Effective Date: These Interim Final Regulations are effective January 27, 1986. The comment period for these regulations, extends for 60 days after their publication in the Federal Register.

ADDRESS: Comments should be forwarded to: K. Jacqueline Holz, Deputy Assistant Secretary for Management Analysis and Systems, Hubert H. Humphrey Building, Room 514E, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ron Lentz, (202) 245-7354.

SUPPLEMENTARY INFORMATION: This Interim Final Rule revises § 95.605 to add the definition of the term "emergency situation", revises § 95.623 governing waiver of the prior approval requirement and adds a new section, 95.624, that provides for DHHS consideration of State requests for FFP in emergency situations. No comments were received relating to § 95.623 of the NPRM.

Regulatory Provisions

Section 95.623 is revised to permit waiving the prior approval requirements contained in § 95.611 for those State requests for funding ADP system developments and acquisitions which were postmarked and received by the Department prior to December 1, 1985, for which a State did not receive prior approval. The intent of this revision is to give the Department the authority to waive the prior approval requirements of § 95.611 in situations where a State undertook an ADP systems development or acquisition in anticipation of the Department retroactively approving the development or acquisition (in effect waiving the prior approval requirement). Until recently, the Department has on several occasions retroactively approved systems developments and acquisitions of merit and led some States to believe erroneously that prior approval was not a pre-condition for

ADP funding. For this reason, a number of States have not sought prior approval in situations that call for it. Because such after the fact approval has not been authorized by existing regulations the Department believes it must provide a mechanism, by regulation, to allow for waiver of the prior approval requirement and not unfairly penalize States that have relied on a Departmental practice not authorized by its regulations.

The Department has chosen to limit the waiver of prior approval provisions contained in § 95.623 to only those State requests for FFP in acquiring ADP equipment or services, postmarked and received by the Department and undertaken without prior approval before December 1, 1985 because:

1. The Department's policy is to require prior approval as a means of assuring its early participation in State system developments and acquisitions. To establish a broad waiver of the prior approval requirement would defeat this purpose.

2. The Department wishes to provide only a brief transition period which allows it to waive prior approval instances where States acted without prior approval based on their perception of the Department's past practice of retroactively approving State ADP initiatives of merit.

By letter dated August 13, 1985, the Assistant Secretary for Management and Budget advised heads of all State public assistance agencies of the requirements for prior approval contained in 45 CFR 95.601 *et seq.* He informed them that "if a State does submit a request for retroactive approval and funding of the design, development and installation of an automatic data processing system, or the acquisition of automatic data processing equipment or services, the Department will deny the request."

We believe that this was sufficient notice to States of the Department's prior approval requirements, and that establishing December 1, 1985 as the cut-off date for permitting the waiver of the Department's prior approval requirements provides sufficient time for States to adjust to long-standing regulatory requirements. Accordingly, for State requests for the acquisition of ADP equipment or services postmarked and received by the Department after December 1, 1985, the Department will no longer waive the prior approval requirements contained in § 95.611.

Section 95.623(a) provides a mechanism for waiving the Department's prior approval requirements contained in § 95.611 for

State systems initiatives which the Department has previously approved retroactively in a formal approval letter. The intent of this Section is to ratify those instances where the Department has previously issued (prior to December 1, 1985) a letter retroactively approving State agency initiatives, although the Department was not permitted to do so under 45 CFR 95.601 *et seq.* This section applies only to the past actions described in this paragraph. The provisions of this section are effective December 1, 1985 with no further action required on the part of the States.

Section 95.623(b) is intended to provide a transition period which permits States to adjust to the Department's change in practice from one of having approved a number of State system initiative retroactively, albeit contrary to regulatory requirements, to one of strict adherence to the prior approval requirements in § 95.611. This transition period extends to December 1, 1985 and applies only to requests, which were postmarked and received by the Department prior to December 1, 1985 for which a State did not receive prior approval. The Department will retroactively approve these actions if the request would have received prior approval had a request for such approval been made by the State agency.

Section 95.605 has been revised to include the definition of the term "emergency situation." Under 45 CFR 95.611 we require States to seek and receive prior approval for ADP equipment and services acquisitions that meet certain expenditure thresholds that are set forth in the regulation. While this long-standing requirement has enabled the Department to have needed involvement in States' program planning, the requirement for prior approval may become counter-productive in emergency situations where ADP materials have to be replaced immediately in order to maintain program operations and still satisfy program requirements. For this reason, we are revising § 95.605 to include a definition of emergency situations and are adding a new § 95.624 to provide a procedure for States to follow in such situations.

The Department will consider as "emergency situations" those situations which could not reasonably have been anticipated and for which a State could not have planned. The following are examples of situations that the Department considers to be "emergency situations."

(a) Equipment failure due to physical damage or destruction caused by natural or other disaster; or,

(b) Changes imposed by Federal legislative requirements which necessitate the immediate acquisition of ADP equipment or services.

The Department will not consider as emergency situations, instances which arise because of poor planning on the part of a State. Examples of situations that the Department does not consider "emergency situations" are:

(a) ADP equipment or software systems becoming obsolete through the rapid development of new technology or software techniques;

(b) The expiration of a contract that provides equipment or services support;

(c) Oversight or administrative inadequacy on the part of a requesting State or local government in obtaining prior approval; or

(d) Changes imposed by Federal legislative requirements which allow the State agency time to comply with the prior approval requirements of § 95.611.

The Department, in reaching a decision as to whether or not a situation should be accepted as an emergency, will require a State to demonstrate that its need to immediately acquire ADP equipment or services was unexpected and could not have been anticipated or planned.

Section 95.624 describes the procedure to be followed by State agencies when requesting approval of FFP for emergency situations as defined in § 95.605. Under this procedure if a State encounters an "emergency situation" as defined in § 95.605, it must submit a written request to the Department to proceed with the ADP acquisition immediately in order to meet the State's emergency need. The written request must be sent by registered mail and include:

(1) A brief description of the ADP equipment and/or services to be acquired;

(2) A brief description of the circumstances which result in the State's need to proceed prior to obtaining approval from the Department; and,

(3) A description of the harm which will be caused if the State does not acquire immediately the ADP equipment and services.

Upon receipt of the information, the Department will within 14 days take one of the following actions:

(1) Inform the State in writing that the request has been disapproved and the reason for disapproval; or,

(2) Inform the State in writing that the Department recognizes that an emergency exists and that within 90

days from the date of the State's initial written request, the State must submit a formal request for approval which includes the information specified at § 95.611 in order for the ADP equipment or services acquisition to be considered for the Department's approval.

The Department is establishing this emergency procedure in recognition of the fact that situations may arise which preclude a State from taking the time to follow the full prior approval procedures contained in § 95.611 before acting to correct the emergency situation in order to meet program requirements. States will be required to meet the requirements of § 95.611, except for the requirement of prior approval, within 90 days from the date of their written emergency request. The granting of FFP by the Department for the emergency acquisition will rest on the Department's determining whether or not the acquisition was necessary and satisfies all requirements of 45 CFR 95.601 *et seq.* except, the requirement of prior approval. In such cases, where those requirements are met, we will approve FFP retroactive to the date of the emergency acquisition.

Interim Final Regulations

These regulations, 45 CFR 95.605, 95.623 and 95.624, are being published in interim final form with an immediate effective date. At the same time, we encourage interested parties to comment upon these new rules so that we may have the full benefit of public participation before the rules are published in final form. We are disposing with prior notice and comment procedures because we believe there is good cause to do so.

Specifically, we find that publication of these regulations in proposed form would be unnecessary, impractical and contrary to the public interest for the following reasons:

1. The Department presently has pending a number of requests from States for retroactive approval of system developments and acquisitions initiated before the Department's approval was requested. The Department believes that the States submitting these late requests acted in good faith based on their perception of the Department's practice until recently, and should not be penalized. While it is important to the efficient operation of affected Public Assistance programs that a number of these requests be approved promptly, the Department has no current authority to provide approval for the ADP equipment and services acquisitions at issue.

2. The Department wishes to immediately put in place a procedure by which States can act to acquire automatic data processing equipment or services in emergency situations without risking the loss of FFP from the Department because the prior approval requirements of § 95.611 were not followed. The Department believes that since it does not have the authority under existing regulations and does not seek the authority to waive its prior approval requirements contained in § 95.611, it must immediately establish procedures for handling emergency situations, so that in the event an emergency arises, a State will have a basis for quickly acting to correct the emergency situation without jeopardizing its eligibility for FFP.

3. We believe that since both the emergency situation and waiver provisions constitute relief and exemption from the pre-existing requirements for prior approval, the immediate effective date we are providing is justified and reasonable.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule because it will not have an annual impact on the economy of \$100 million or more, result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions, or otherwise meet the thresholds of the Executive Order.

Regulatory Flexibility Analysis

Regulatory Flexibility Act (Pub. L. 96-354) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities in appropriate cases. This rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-611), the Department has previously obtained OMB clearance of the paperwork requirements contained in § 95.611, referenced under § 95.623 of this interim final rule. The OMB number is 0990-0058.

The emergency processing paperwork requirements contained in Section 95.624 of this interim final rule have been approved by OMB. The OMB approval number is 0990-0160.

(Catalog of Federal Domestic Assistance Program Numbers 13.645 Child Welfare Services—State Grants, 13.658, Foster Care, Maintenance, 13.659, Adoption Assistance; 13.679, Child Support Enforcement Program; 13.714, Medical Assistance Program; 13.808, Assistance Payments—Maintenance Assistance; 13.810, Assistance Payments—State and Local Training)

List of Subjects in 45 CFR Part 95

Claims, Computer technology, Grant programs—health, Grant programs—social programs, Social Security.

PART 95—[AMENDED]

45 CFR Part 95, Subpart F, is amended as set forth below:

The authority citation for 45 CFR Part 95, Subpart F is added to read as follows:

Authority: Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302.

1. Section 95.605 is amended to add the definition for "emergency situation" as follows:

§ 95.605 Definitions.

* * * * *

"Emergency situation" is defined as a situation where:

(a) A State can demonstrate to the Department an immediate need to acquire ADP equipment or services in order to continue the operation of one or more of the Social Security Act programs covered by Subpart F, and

(b) The State can clearly document that the need could not have been anticipated or planned for and the State was prevented from following the prior approval requirements of § 95.611.

* * * * *

2. Section 95.623 is revised to read as follows:

§ 95.623 Waiver of prior approval requirements.

For ADP equipment and services acquired by a State without prior written approval, the Department may waive the prior approval requirement if prior to December 1, 1985:

(a) The State submitted to the Department all information required under § 95.611, satisfactorily responded to all concerns raised by the Department and received a final letter of approval from the Department; or,

(b) The State has a request pending with the Department for retroactive approval, which the Department received before December 1, 1985 and the Department determines that the request would have received prior approval had a timely request for such approval been made by the State agency.

(Approved by the Office of Management and Budget under control No. 0990-0058.)

3. A new § 95.624 is added to read as follows:

§ 95.624 Consideration for FFP in emergency situations.

For ADP equipment and services acquired by a State after December 1, 1985 to meet emergency situations, which preclude the State from following the requirements of § 95.611, the Department will consider providing FFP upon receipt of a written request from the State. In order for the Department to consider providing FFP in emergency situations, the following conditions must be met:

(a) The State must submit a written request to the Department, prior to the acquisition of any ADP equipment or services. The written request must be sent by registered mail and include:

(1) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs;

(2) A brief description of the circumstances which result in the State's need to proceed prior to obtaining approval from the Department; and,

(3) A description of the harm which will be caused if the State does not acquire immediately the ADP equipment and services.

(b) Upon receipt of the information, the Department will within 14 days take one of the following actions:

(1) Inform the State in writing that the request has been disapproved and the reason for disapproval; or,

(2) Inform the State in writing that the Department recognizes that an emergency exists and that within 90 days from the date of the State's initial written request, the State must submit a formal request for approval which includes the information specified at § 95.611 in order for the ADP equipment or services acquisition to be considered for the Department's approval.

(c) If the Department approves the request submitted under paragraph (b) of this Section, FFP will be available from the date the State acquires the ADP equipment and services.

(Approved by the Office of Management and Budget under control number 0990-0160.)

* * * * *

Dated: November 13, 1985.

Margaret M. Heckler,
Secretary.

[FR Doc. 86-1717 Filed 1-24-86; 8:45 am]

BILLING CODE 4150-04-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1312

[Ex Parte No. 387]

Railroad Transportation Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: By rules that became effective January 4, 1983, 47 FR 50261 (November 5, 1982), the Commission established regulations to govern the filing of railroad contracts and contract summaries pursuant to 49 U.S.C. 10713. As currently provided at 49 CFR 1039.3(a) and 49 CFR 1312.41(a)(1), an original and one copy of the contract is to be filed with the Commission. There is a contradiction, however, as to the number of contract summaries to be filed, with § 1312.41(a)(1) calling for the filing of 3 copies of the contract summary while § 1039.3(a)(1) requires only 2.

The Commission is amending the rules to require the filing of: (1) Only an original contract, and (2) three copies of contract summaries.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: C.E. Langyher, Chief, Section of Tariffs, Bureau of Traffic, (202) 275-7739.

SUPPLEMENTARY INFORMATION: At the present time the Commission's regulations at 49 CFR 1039.3 and 49 CFR 1312.41 direct that an original and one copy of the contract, or amendments thereto, be filed. The purpose of the contract "copy", in addition to the original, was to accommodate the

Commission's Office of Compliance and Consumer Assistance (OCCA) with a copy. OCCA no longer requires copies of rail contracts. Thus, we are amending the rules to require only the original of filed contracts.

Further, through oversight, when 49 CFR 1312.41 was established requiring the filing of three copies of the contract summary and supplements, the companion provisions of 49 CFR 1039.3 were not similarly amended. We intend to rectify this oversight by bringing the regulations into agreement.

Since this rule change results in a lessening of regulation and removal of a conflict, it is issued in final form. Notice and public comments are not required.

This action does not significantly affect the quality of the human environment, the conservation of energy resources, or small entities.

List of Subjects in 49 CFR Parts 1039 and 1312

Railroads.

(49 U.S.C. 10321, 10505, 10713, 10762, and 11105; 5 U.S.C. 553)

(49 U.S.C. 10762; 5 U.S.C. 553)

Decided: January 17, 1986.

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

James H. Bayne,
Secretary.

Appendix

The Commission is amending 49 CFR Parts 1039 and 1312 as follows:

PART 1039—CONTRACTS AND EXEMPTIONS

1. The authority citation for 49 CFR Part 1039 continues to read as follows:

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

2. 49 CFR Part 1039 is amended by revising the first and second sentences of § 1039.3(a) to read as follows:

§ 1039.3 Filing and approval.

(a) Rail carriers providing transportation subject to Subchapter I of Chapter 105 of Title 49, United States Code, shall file with the Commission an original contract entered into with one or more purchasers of rail service. The contract will be accompanied by three copies of a summary of the non-confidential elements of the contract in the format specified in 49 CFR 1312.41.

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

3. The authority citation for 49 CFR Part 1312 continues to read as follows:

Authority: 49 U.S.C. 10762; 5 U.S.C. 553.

4. 49 CFR Part 1312 is amended by revising § 1312.41 paragraph (a)(1)(i) to read as follows:

§ 1312.41 [Amended]

(a) * * *

(1) * * *

(i) Railroads entering into contracts for railroad transportation services with purchasers of rail service shall file with the Commission's Section of Tariffs an original contract and three copies of the contract summary.

[FR Doc. 86-1721 Filed 1-24-86; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register

Vol. 51, No. 17

Monday, January 27, 1986

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

(Airspace Docket No. 85-AGL-22)

Proposed Alteration of Transition Area—Manitowoc, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Manitowoc, Wisconsin, transition area to accommodate a new ILS Runway 17 instrument approach procedure to Manitowoc County Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before February 28, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 85-AGL-22, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The present transition area is being expanded to accommodate a new ILS Runway 17 instrument approach procedure. The additional airspace designated will be approximately a 1.5-mile expansion to the west and from 13 miles north of the VOR point expanding to 23 miles north of the VOR with a 5-mile width either side of the 349° radial.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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-AGL-22." 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, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Manitowoc, Wisconsin.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 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

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to

amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

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.

§ 71.181 [Revised]

2. By revising § 71.181 as follows:

Manitowoc, Wisconsin

That airspace extending upward from 700 feet above the surface within 9.5 miles west and 5 miles east of the Manitowoc VOR 349° radial and 169° radial extending from 2 miles south to 13 miles north of the VOR, then within 5 miles west and 5 miles east of the Manitowoc VOR 349° radial extending from the 13 miles north of the VOR point to 23 miles north of the VOR. Also, within 9.5 miles west and 5 miles east of the Manitowoc VOR 176° radial extending from the VOR to 12 miles south of the VOR.

Issued in Des Plaines, Illinois, on January 13, 1986.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 86-1665 Filed 1-24-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Public Comment and Opportunity for Public Hearing on a Modification to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by the Commonwealth of Kentucky as a modification to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment pertains to alternative enforcement actions.

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the

proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before February 26, 1986, will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on February 21, 1986, beginning at 10:00 a.m. at the location shown below under "ADDRESSES."

ADDRESSES: Written comments should be mailed or hand delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

If a public hearing is held its location will be at: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Kentucky program, the proposed modifications to the program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSMRE offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington, DC 20240.

Bureau of Surface Mining Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

Pursuant to 30 CFR 732.17(h)(2)(ii), each requestor may receive, free of charge, one single copy of the proposed amendment by contacting OSMRE's Lexington Field Office listed under "ADDRESSES."

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington, Kentucky Field Office will not necessarily be considered and included in the

Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business ten working days before the date of the hearing. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Submission of written statements at the time of the hearing is requested and will greatly assist the transcriber. Submissions of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specific date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings are open to the public and if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSMRE. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 Federal Register (47 FR 21404-21435).

Information pertinent to the general background on the Kentucky State program, including the Secretary's findings, the disposition of comments

and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 Federal Register notice.

III. Submission of Program Amendment

On December 10, 1985, Kentucky submitted a program amendment to modify requirements pertaining to alternative enforcement actions to be taken under certain circumstances (Administrative Record No. KY 681). The amendment further modifies a revision to the Kentucky rules that was approved by the Director, OSMRE, on November 20, 1985 (50 FR 47728). The amendment modifies language at 405 KAR 7:090 section 11(2)(a) concerning appropriate action to be taken if a permittee has not abated a violation within thirty days following the prescribed abatement period. The amended language references alternative enforcement actions at KRS 350.990(3), KRS 350.990(4), KRS 350.990(9) and "the pattern of violations provisions of KRS 350.028(4)." The amendment that was previously approved did not contain the language "the pattern of violations provisions" in reference to KRS 350.028(4).

Therefore, the Director, OSMRE is seeking public comment on the adequacy of the proposed program amendment. Comments should specifically address the issue of whether the proposed amendment is in accordance with SMCRA and no less effective than its implementing regulations.

IV. Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 21, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 86-1668 Filed 1-24-86; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2948-5]

Approval and Promulgation of Implementation Plans; Arizona, Maricopa Carbon Monoxide Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice announces EPA's proposed actions under the Clean Air Act on certain revisions to the carbon monoxide (CO) State Implementation Plan (SIP) for Maricopa County (Phoenix), Arizona. First, EPA proposes to approve emission reduction measures contained in the Maricopa CO plan because they strengthen the existing SIP. Second, EPA proposes to disapprove the Maricopa CO plan, as revised in 1982 and 1985, as not meeting all of the requirements of Part D (sections 171-178) of the Clean Air Act. Finally, based on that proposed finding, EPA also proposes to impose the construction ban set forth in Section 110(a)(2)(1) of the Act on major new stationary sources and major modifications of stationary sources of CO in the Maricopa CO nonattainment area.

DATES: Comments should be submitted to EPA on or before March 13, 1986.

ADDRESSES: Send any comments to: Regional Administrator, Attn: Air Management Division, State Liaison Section (A-2-2), Environmental Protection Agency, Region 9, 215

Fremont Street, San Francisco, CA 94105.

Copies of the submitted SIP revision may be inspected during normal business hours at the above address or at the following locations:

Arizona Department of Health Services, Division of Environmental Health, 2005 N. Central, Phoenix, AZ 85004;

Maricopa Association of Governments, 1820 West Washington, Phoenix, AZ 85007;

Maricopa County Bureau of Air Pollution Control, 1845 East Roosevelt Phoenix, AZ 85006.

FOR FURTHER INFORMATION CONTACT:

Wallace D. Woo, Chief, State Liaison Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105. Tel: (415) 974-7634. FTS: 454-7634.

SUPPLEMENTARY INFORMATION: This notice contains the following sections: "Background", "CO Plan Evaluation", and "Proposed Actions". The "Background" section briefly summarizes the history of the development of the CO SIP for Maricopa County. The "CO Plan Evaluation" section discusses EPA's review of the State's 1982 Part D CO SIP submittal for Maricopa. The "Proposed Actions" section describes EPA's proposal to approve the measures in the CO plan submittal as helpful to attainment. It also describes EPA's proposal to (1) find that the plan as a whole does not meet all of the requirements of Part D of the Act and (2) impose a construction ban on CO sources in the area until the State submits, and EPA approves, a new attainment demonstration (including, but not limited to, an air quality analysis and updated emission inventory) and the necessary control measures for the area. It also discusses additional sanctions that EPA is considering imposing in the event the State does not submit such a package within a reasonable time.

Background

The Clean Air Act (CAA) amendments of 1977 required states to revise their SIPs by certain times for all areas that had not attained the National Ambient Air Quality Standards (NAAQS). The 1979 SIP revisions were to provide for attainment of the NAAQS by December 31, 1982. An extension of the attainment date for ozone or CO to no later than December 31, 1987 was available under section 172 if the State could demonstrate that attainment by the end of 1982 was not possible, despite the implementation of all reasonably

available control measures. For areas for which EPA approved an extension of the attainment date beyond 1982, states were required to submit to EPA by July 1, 1982 an additional SIP revision that provided for attainment no later than December 31, 1987 and that complied with all other requirements of Part D of the CAA.

Maricopa County was designated nonattainment for CO on March 3, 1978 (43 FR 8970). The State submitted various elements of Maricopa County's 1979 nonattainment area plan for CO on January 4, January 18, February 23, July 3, and November 6, 1979, and on June 23, July 17, and October 30, 1980. On October 30, 1980, the State submitted a request to EPA to extend the attainment date for CO in Maricopa County to December 31, 1987. EPA proposed to approve the extension request on February 5, 1982 (47 FR 5439).

On May 5, 1982 (47 FR 19826), EPA conditionally approved the 1979 Maricopa CO plan. That plan purported to demonstrate attainment of the CO standard by December 31, 1982 through the implementation of the following control measures: (1) An automotive Inspection and Maintenance (I/M) program, (2) traffic signal coordination improvements, (3) public transit improvements, (4) carpool and vanpool programs, and (5) the Federal Motor Vehicle Emission Control Program.

EPA approved the 1979 plan contingent upon the submittal of regulations meeting the New Source Review (NSR) requirements in Part D. In response to that condition, the State submitted NSR regulations for Maricopa County on June 3, 1982 and March 4, 1983. EPA proposed to approve those rules on July 3, 1983 (48 FR 34293), with one exception and certain understandings. In a separate Federal Register notice, EPA is taking action on the NSR rules and the 1982 NSR condition.

Beyond establishing this NSR condition, EPA, in its final action on the 1979 CO plan, found that the plan by itself was not adequate to bring about attainment of the CO standard by the end of 1982. Thus, EPA gave only limited approval to the 1979 plan, and premised that approval on the expectation that (1) the Agency would take final action to grant the State's request for an attainment date extension to December 31, 1987 and (2) the State would submit another plan revision providing for attainment in Maricopa County by that date. The State submitted such a plan revision on October 28, 1982. In addition, in 1985 the State enacted a set of measures expanding the current I/M program in Maricopa County, which

EPA expects the State to submit as a SIP revision. EPA will act on those additional I/M measures in a separate notice. EPA's evaluation of, and proposed action on, the 1982 revision are discussed in the "CO Plan Evaluation Section", below. EPA's detailed evaluation of the revisions appear in the technical support document available for public inspection at EPA's Region 9 office in San Francisco.

CO Plan Evaluation

For a SIP revision to be approved, it must meet the requirements of section 110 of the CAA and any pertinent requirements of 40 CFR Part 51. For a nonattainment area plan revision to be approved, it must satisfy the requirements of Part D of the CAA, including section 172. Section 172 contains special requirements for 1982 plan revisions for areas that receive an extension of the attainment date for CO or ozone beyond December 31, 1982. EPA addressed these requirements in detail in policy guidance published in a January 22, 1981 Federal Register notice (46 FR 7182). That guidance supplemented guidance issued in EPA's "General Preamble" for Part D plans (44 FR 20372 (April 4, 1979)) and four additional notices (44 FR 38583 (July 2, 1979); 44 FR 50371 (August 28, 1979); 44 FR 53761 (September 17, 1979); and 44 FR 67182 (November 23, 1979)).

As discussed above, EPA promised its conditional approval of the 1979 Maricopa CO plan partly on the assumption that the Agency would grant the State's request for an attainment date extension to December 31, 1987. EPA has evaluated the 1982 Maricopa CO plan on the same assumption. Thus, consistent with the State's intent, EPA has judged the 1982 Maricopa CO plan revision against not only the general Part D requirements, but also the requirement in section 172 that the follow-up SIP for an extension area provide for attainment by the extended date.

Attainment Demonstration

The 1982 plan revision contains a revised CO control strategy based on an updated emission inventory and air quality data base. More specifically, the base year for the emission inventory and air quality data has been updated from 1976 to 1979, and the emission factors for mobile sources have been updated.

The 1979 inventory shows an estimated 825 tons/day from traffic emissions and 86 tons/day from nontraffic emissions. Thus, approximately 90 percent of the CO

emissions are the result of automotive traffic. The revised mobile source inventory is based on EPA's MOBILE1 emission factors, which are more accurate than the factors that were used for the 1979 plan.

The control strategy was developed using the APRAC 3 area-wide dispersion model with the MOBILE1 emission factors. A variety of control strategies were modeled, and the targeted allowable emission inventory was calculated to be 462 tons/day. The APRAC model predicted that at that emission level, the maximum CO concentration value would be 9 ppm (within the CO standard).

The analysis projects that a 580 tons/day emission level would occur if only the controls contained in the 1979 plan were applied. Additional control measures included in the 1982 plan and their expected emission reductions are: (1) A commitment to expand the I/M program to include vehicles with a model year of 1969 or later for 71 tons/day reduction (the current program covers vehicles 13 years old and newer as of the testing date—a rolling 13-year period); (2) site-specific traffic flow flow improvement projects for 24 tons/day reduction; (3) an increase in the vehicle occupancy rate from 1.33 to 1.4 for 35 tons/day reduction; and (4) an increase of 50,000 in the average daily transit ridership for 3 tons/day reduction. The total emission reduction included in the plan was therefore estimated at 133 tons/day. Analysis of these figures using the MOBILE1 factors indicates, however, that the actual emission reduction would be only 128 tons/day, since the combination of an expanded I/M program and the increased vehicle occupancy would produce 5 tons/day less emission reductions than the sum of those control measures considered separately.

Thus, the MOBILE1 analysis shows that the total emission reduction achievable with the control measures included in the plan would be an additional 128 tons/day, which would result in a 452 tons/day emission level by 1987. Since the MOBILE1 analysis shows that the emission level that would attain the standard is 462 tons/day, the analysis predicts that this control strategy would result in attainment of the standard by 1987.

The Maricopa attainment demonstration is generally consistent with EPA's earlier guidance on using the MOBILE1 factors to predict CO emission reductions.

As mentioned earlier, the state's MOBILE1 demonstration assumed that a 71 tons/day CO emissions reduction

would result by 1987 from expansion of the state's I/M program to include vehicles with a model year of 1969 or later. On February 24, 1984, EPA informed the State that the Agency could not approve the 1982 CO plan unless the State provided adequate legal authority for this expansion of the I/M program in Maricopa. As indicated above, the State provided legal authority for several I/M changes in 1985. Those changes would: (1) Expand the program to cover vehicles with a model year of 1972 or later; (2) create a 3-point program to restrict owner tampering of vehicles that are found to fail the I/M test; (3) decrease from \$75 to \$50 the amount of money an owner must spend on vehicle repair following failure of the I/M test to become eligible for a waiver of the requirement to pass; (4) eliminate the previously automatic waiver upon a 40% reduction in idle emissions; and (5) remove the authority of peace officers to enforce I/M requirements.

This mix of changes is different from the single model-year change to which the State had committed in the 1982 submittal. The State has not submitted a supplementary demonstration showing that the new measures will achieve the CO emission reduction that the 1982 MOBILE1 demonstration concluded is needed, together with the reductions achieved by other measures, to bring about attainment of the CO standard. For this reason, EPA cannot conclude that the submittal as a whole meets the requirement in section 172 for a plan that provides for attainment of the standard by the end of 1987.

Before EPA can approve the plan as adequate to meet that requirement, the State must submit a revised demonstration using the latest available EPA mobile source emission factors (the MOBILE3 factors) and modeling procedures. A demonstration must be provided to show that the control measures the state and local governments have adopted, or will adopt, will provide for attainment by that date. Further improvements to the I/M program should be evaluated along with other control options necessary to demonstrate attainment. In addition, the new analysis should address the control of identified CO "hotspots."

Legally Adopted Measures

The revised plan contains several Transportation Control Measures (TCMs) that are listed in section 108(f) of the Act. The State intends those TCMs to achieve the CO emissions reductions assumed in the 1982 MOBILE1 attainment demonstration. Commitments are provided by the various responsible local government

agencies to implement the site-specific control measures. The plan also includes commitments to area-wide control measures, e.g. a program for increased car/van pool ridership. Although a specific commitment to actions to achieve increased public transit ridership is not included in the plan, the transit budget provides funding to implement this control measure. All of these measures would strengthen the current SIP.

The plan does not incorporate many other TCMs listed in section 108(f). In most cases, it concludes that these measures are not feasible for the Phoenix area. Given the relatively small amount of guidance EPA has provided the states on the applicability of these measures to different types of areas, EPA has generally accorded substantial deference to the states' conclusions on whether these measures are indeed applicable. EPA anticipates, however, that many states and localities with continuing CO nonattainment problems will need to place greater emphasis on re-evaluating and, where feasible, implementing the section 108(f) and other TCMs because of the improved likelihood of CO attainment with the measures. For that reason, any future plan updates from Maricopa must include new, more detailed analyses of the feasibility of applying TCMs beyond those that Maricopa has already determined are feasible.

Reasonable Further Progress (RFP)

The revised plan includes a revised RFP demonstration. It indicates that a 56.1 tons/day reduction from the 1979 base year inventory will be achieved each year from 1979 through 1987 to ensure RFP. The plan also includes a commitment to assess annually the effectiveness of the control measures to ensure that RFP is being met. These projections and commitments are satisfactory as elements of the attainment demonstration using MOBILE1 factors, but a new RFP demonstration will have to accompany any revised modeling analysis based on MOBILE3 factors.

Additional Requirements

Plans should also include the following elements: (1) Adequate evidence of public and governmental involvement; (2) a contingency provision that describes the process of correcting a failure to meet RFP; (3) procedures to ensure that transportation plans, programs, and projects approved by the Metropolitan Planning Organization conform with the SIP, as required by section 176(c) of the Act; and (4) a commitment to develop, expand, or

improve public transportation to meet basic transportation needs. The revised plan addresses all of these requirements except that it does not contain conformity procedures. However, conformity procedures satisfying section 176(c) were included in the 1979 Maricopa SIP and are still operative.

Summary of CO Plan Evolution

The plan strengthens the current CO SIP, since it contains a revised and updated data base, control strategy analysis, and additional control measures.

For the reasons described above, however, EPA cannot now conclude that the 1982 submittal together with the I/M measures recently adopted by the State meet the requirement for a plan revision that provides for attainment of the CO standard by the end of 1987.

Proposed Action

Based on the conclusions discussed above, EPA proposes to: (1) Approve the legally adopted control measures included in the 1982 CO plan submittal, as a part of the Maricopa CO SIP, because they are helpful to attainment, and (2) find that the Maricopa CO SIP as a whole, taking into account these new measures, does not adequately demonstrate attainment of the CO NAAQS by the end of 1987 and therefore does not meet all of the requirements of Part D of the Clean Air Act.

Consistent with section 110(a)(2)(I) of the Act and the policy contained in EPA's *Federal Register* notice of November 2, 1983 (48 FR 50686), EPA also proposes that, if after consideration of public comments it concludes that the Maricopa CO plan does not meet the requirements of Part D, the Agency will at that time impose a ban on the construction of major sources and major modifications of sources of CO in the Maricopa CO nonattainment area. Once that ban is in place, EPA would lift it only upon final approval of a corrective CO plan revision of the type described earlier.

Interested parties are invited to comment on all aspects of these proposed actions.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under the Regulatory Flexibility Act 5 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities. If EPA takes final action as proposed today, a moratorium on the construction and modification of major stationary sources will go into effect in

the nonattainment areas of the State affected. EPA does not have sufficient information to determine the impacts such a moratorium may have on small entities, because it is difficult to obtain reliable information on future plans for business growth. Even if this action, when promulgated, were to have a significant impact, the Agency could not modify its action. Under the Clean Air Act, the imposition of a construction moratorium is automatic and mandatory whenever the Agency determines that an implementation plan for a nonattainment area fails to meet the requirements of Part D of the Clean Air Act.

List of Subjects in 40 CFR Part 52

Air Pollution control,
Intergovernmental relations, Carbon
monoxide.

Authority: 42 U.S.C. 7401-7642.

Dated: October 30, 1985.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 86-1689 Filed 1-24-86; 8:45 am]

BILLING CODE 6580-50-M

40 CFR Part 52

[A-9-FRL-2948-7]

Approval and Promulgation of Implementation Plans; Arizona, Pima County Carbon Monoxide Plan

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice announces EPA's proposals under the Clean Air Act (1) to deny Arizona's request for an extension of the date for attaining the National Ambient Air Quality Standard (NAAQS) for carbon monoxide (CO) to December 31, 1987 in the Tucson Air Planning Area in Pima County and (2) to find that the CO State Implementation Plan (SIP) for that area, as revised in 1984, does not provide for attainment of the CO NAAQS as expeditiously as practicable, and therefore does not satisfy the requirements of Part D (sections 171-178) of the Act, and (3) based on that finding, to impose a moratorium on the construction and modification of CO stationary sources in the Tucson Air Planning Area under section 110(a)(2)(1) of the Act. If EPA makes these actions final, Arizona will need to submit an additional plan revision as a prerequisite to lifting the construction moratorium.

DATE: Comments should be submitted to EPA on or before March 13, 1986.

ADDRESSES: Send any comments to: Regional Administrator, Attn: Air Management Division, State Liaison Section (A-2-2), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the 1982 extension request and the 1984 SIP revision may be inspected during normal business hours at the above address or at the following locations:

Arizona Department of Health Services,
Division of Environmental Health,
2005 N. Central, Phoenix, AZ 85004

Pima Association of Governments, 177
N. Church, 405 Transamerica Bldg.,
Tucson, AZ 85701

Pima County Air Pollution Control
District, 150 W. Congress, Tucson, AZ
85701.

FOR FURTHER INFORMATION CONTACT:
Wallace D. Woo, Chief, State Liaison
Section, Air Management Division,
Environmental Protection Agency,
Region 9, 215 Fremont Street, San
Francisco, CA 94105, Tel: (415) 974-7634,
FTS: 454-7634.

SUPPLEMENTARY INFORMATION: This notice contains the following sections: "Background", "Extension Request Evaluation", "CO Plan Evaluation", and "Proposed Action". The "Background" section briefly summarizes the history of the development of the CO SIP for the Tucson Air Planning Area in Pima County (hereinafter referred to as "Pima County" or "the County"). The "Extension Request Evaluation" section describes EPA's reasons for denying the state's request for an extension of the date for attaining the CO standard in the County. The "CO Plan Evaluation" section discusses EPA's review of the State's 1984 Part D CO SIP revision for the County. The "Proposed Action" section sets forth EPA's proposals (1) to deny Arizona's request for an extension of the date for attaining the NAAQS for CO to December 31, 1987 in the County, (2) to find that the Pima County CO plan as a whole does not adequately demonstrate that the measures in the plan provide for attainment as expeditiously as practicable, as required by Part D of the Act, and (3) based on that finding, to impose the moratorium on the construction and modification of CO stationary sources in the county under section 110(a)(2)(1) of the Act. These actions would supplement the actions EPA is taking in separate notices to address deficiencies in the Pima County Part D plan for CO relating to new source review requirements. Those notices should be read in conjunction with this notice.

Background

The Clean Air Act Amendments of 1977 required states to revise their SIPs for all areas that had not attained the National Ambient Air Quality Standards (NAAQS). The 1979 SIP revisions were to provide for attainment of the NAAQS by December 31, 1982. An extension of the attainment date for ozone or CO to no later than December 31, 1987 was available under section 172 if the state could demonstrate that attainment by the end of 1982 was not possible, despite the implementation of all reasonably available control measures. For areas for which EPA approved an extension of the attainment date beyond 1982, states were required to submit to EPA by July 1, 1982, an additional SIP revision that provided for attainment no later than December 31, 1987, and that complied with all other requirements of Part D of the Act.

Pima County was designated as nonattainment for CO on March 3, 1978 (43 FR 8970), and the State submitted Pima County's initial nonattainment area plan for CO in 1978. On May 24, 1982, the State submitted a request to EPA to extend the attainment date for CO in Pima County to December 31, 1987. In that submittal, the state informed EPA that it believed the 1978 CO plan was inadequate by itself to bring about attainment by the end of 1982.

On July 7, 1982 (47 FR 29532), EPA took final action to approve the 1978 SIP revision on the condition that the State submit revised regulations for Pima County to meet EPA's new requirements for New Source Review (NSR). The state has recently submitted revised NRS regulations for the County, and EPA will be acting on those rules in the near future.

On February 3, 1984, the Arizona Department of Health Services (ADHS) submitted proposed revisions to the 1978 CO plan for Pima County, including an evaluation of control options for the County, adjustments to the baseline and projected data assumptions, and a new section dealing to CO "hotspot" control. The State intended the revisions to fulfill the requirement for a supplementary plan revision applicable to CO nonattainment areas that have requested an attainment data extension. On March 1, 1985 (50 FR 8346), EPA proposed to approve and incorporate into the SIP the CO control measures in the plan update, including certain traffic flow improvement measures, as helpful to attainment of the CO standard. In that notice, however, EPA stated that it was deferring action on whether the

attainment demonstration and measures met the requirements of Part D, including the requirement for a plan update that provides for attainment by the applicable Part D deadline. Today's notice sets forth EPA's proposed findings on that question.

This notice also sets forth EPA's proposed action on the State's attainment date extension for the County.

Extension Request Evaluation

The State submitted its request for an extension of the CO attainment date for Pima County on May 14, 1982. EPA has reviewed the request against the requirements in Part D for such requests.

Section 172(a)(2) authorizes extensions of the attainment date for CO where the state demonstrates that the standard is not attainable before 1983 through the implementation of all reasonably available control measures. Section 129(c) discusses the timing of Part D submittals. It first states that initial Part D SIPs were due by January 1, 1979. It then says that, "[i]n the case of any State for which a plan revision adopted and submitted before such date has made the demonstration required under section 172(a)(2) of the Clean Air Act (respecting the impossibility of attainment before 1983), such State shall [submit of follow-up SIP by July 1, 1982]." In a November 1983 policy on the applicability of sanctions under Part D, EPA interpreted these provisions to mean that an extension request generally would be timely if the state submitted it with its first round of Part D SIP submissions (48 FR 50691: col. 2-3). Although EPA acknowledged that Section 129 appears to provide a deadline of January 1, 1979 for submittal of such requests, the Agency noted that the legislative history contains no express indication of why Congress imposed that deadline, and concluded that Congress most likely "wanted to force States to make decisions on extensions early in the planning process, to ensure that there would be sufficient time to implement the stringent controls needed for an area where, 'reasonable measures' would not provide for attainment." *Id.* (col. 3). EPA continues to adhere to this view. EPA believes that Congress intended the Agency to treat an extension request as timely if the state makes it as early as possible as part of its initial round of Part D planning, but not so late as to adversely affect attainment by the end of 1987.

Arizona submitted the Pima County extension request in mid-1982, more than three years after submittal of its initial Part D CO SIP for the County. It appears that the request represented an

independent, additional step in the Part D planning process for the County, rather than the last step in the initial round of Part D SIP planning that commenced in 1979. For that reason, EPA cannot conclude that the request is timely, within the meaning of Sections 172 and 129 of the Act.

CO Plan Evaluation

To evaluate a CO plan update under Part D, the Agency must first determine the applicable attainment date. As indicated above, EPA is proposing to deny the State's attainment date extension request for Pima County. Under Section 172, the applicable attainment date was December 31, 1982 for areas that do not receive approval of an extension request. Under EPA's policy on sanctions under Part D (48 FR 50686; November 2, 1983), the Agency will approve plan revisions for nonextension areas that did not attain the relevant standard by the end of 1982 if they provide for attainment as expeditiously as practicable, even though that date is beyond 1982. Accordingly, EPA has evaluated the Pima County CO plan update to see if it demonstrates adequately that the plan provides for attainment of the CO standard as expeditiously as practicable.

A detailed evaluation of the attainment demonstration in the Pima County plan update appears in the EPA technical support document available for public inspection at the EPA Region 9 Office in San Francisco. The most important aspects of that evaluation are described below.

Emission Inventory

Although the inventory relating to areawide CO emissions and concentrations appears to conform to EPA guidance, the portion of the inventory relating to emissions and concentrations at the CO "hotspots" that the County has identified are not adequately documented. The available documentation does not adequately explain which values the County used for model inputs such as temperature and future-year mobile source fleet characteristics. Also, the traffic volume values assumed for the three hotspot intersections are lower than many of the peak traffic volumes that were actually measured. Therefore, it is not possible to determine whether the inventories represent an average worst case day. These flaws could have resulted in an underprediction of CO concentrations by the model.

Modeling and Design Value

The plan did not substantiate the mixing depth assumption used for periods of NAAQS exceedance. Moreover, the wind assumptions used in the model were derived from on-site averages, and therefore do not represent worst case meteorology. Since the modeling accounted for only one wind direction, it was not run to find the point where the maximum CO concentrations would occur at the intersections. Also, the demonstration used an average urban CO concentration as background, rather than the CO background values that actually exist when the NAAQS violations occur at the intersections. In sum, the model inputs used produce outputs that one would expect to be biased low. For that reason, the modeling analysis is not adequate to show whether the strategy will bring about attainment of the CO NAAQS.

To correct these problems, the State must submit a revised demonstration, using current EPA emission factors and modeling procedures, showing that the control measures that the State and local governments have adopted, or will adopt, provide for attainment of the CO standard as expeditiously as practicable in Pima County.

Control measures

As discussed in the March 1, 1985 proposal notice, the plan includes measures aimed at controlling CO emissions at the "hotspot" intersections. Consistent with that proposal, EPA intends to approve those measures for incorporation into the SIP when the Agency takes final action on today's proposal.

Although the plan incorporates some of the Transportation Control Measures (TCMs) listed in section 108(f) of the Clean Air Act, it does not include many others listed in that provision. Given the relatively small amount of guidance EPA has provided the states on the applicability of these measures to different types of urban areas, EPA has generally accorded substantial deference to the states' conclusions on whether those measures are indeed applicable. EPA anticipates, however, that many states and localities with continuing CO nonattainment problems will need to place a greater emphasis on evaluating and, where feasible, implementing these and other TCMs because many of them may be practicable, and in some cases there is a significantly improved likelihood of attainment with them. For that reason, any future plan update from Pima County must include new, more detailed

analyses of the feasibility of applying TCMs beyond those that the County has already determined are feasible.

Summary

Because the plan includes control measures that strengthen the SIP, EPA intends to incorporate those measures into the SIP as helpful to attainment of the CO standard. However, because of the significant deficiencies in the modeling demonstration discussed above, EPA does not have an adequate basis for concluding that the plan, as a whole, provides for attainment as expeditiously as practicable.

Proposed Action

Based on the evaluation set forth above, EPA proposes (1) to deny the attainment date extension request for Pima County, (2) to find that the Pima County CO Part D plan as a whole does not meet the requirement in section 172 for a plan demonstrating attainment as expeditiously as practicable and (3) based on that finding, to impose the moratorium on the construction and modification of CO stationary sources in the Tucson Air Planning Area under section 110(a)(2)(1) of the Act. EPA proposes to condition the lifting of that construction moratorium on the State's submitting a further modeling analysis that adequately demonstrates attainment of the CO standard as expeditiously as practicable in the area. These actions would supplement the actions EPA is taking in separate notices to address deficiencies in the Pima County Part D plan for CO relating to new source review requirements. Interested parties are invited to comment on all aspects of these proposed actions.

Regulatory Process

Under the Regulatory Flexibility Act 5 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities. If EPA takes final action as proposed today, a moratorium on the construction and modification of major stationary sources will go into effect in the nonattainment areas of the State affected. EPA does not have sufficient information to determine the impacts such a moratorium may have on small entities, because it is difficult to obtain reliable information on future plans for business growth. Even if this action, when promulgated, were to have a significant impact, the Agency could not modify its action. Under the Clean Air Act, the imposition of a construction moratorium is automatic and mandatory whenever the Agency determines that an implementation plan for a nonattainment area fails to meet the

requirements of Part D of the Clean Air Act.

Regulatory Process

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon Monoxide, Intergovernmental relations.

Authority: 42 U.S.C. 7401-7642.

Dated: October 30, 1985.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 86-1690 Filed 1-24-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[OW-FRL-2955-9]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate two existing dredged material disposal sites and one new dredged material disposal site located in the Pacific Ocean offshore of Coos Bay, Oregon, as EPA approved ocean dumping sites for the dumping of material dredged from the bay to maintain navigation channels. The two existing sites (sites E and F) would be used for disposal of larger grained dredged material, while the new site (site H) farther offshore would be used for disposal of finer sediments more compatible with sediments of that area. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of this material.

DATE: Comments must be received on or before March 13, 1986.

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

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest, Washington, DC
EPA Region X, 1200 Sixth Avenue, Seattle, Washington
U.S. Army Corps of Engineers Library, Portland District, 319 Southwest Pine, Portland, Oregon.

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

SUPPLEMENTARY INFORMATION:

A. Background

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. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.) and was extended on February 7, 1983 (48 FR 5557 et seq.). That list established two of the Coos Bay sites as interim sites and extended the sites' period of use until January 31, 1985. The interim designation of these two sites was further extended to December 31, 1988, on February 19, 1985 (50 FR 6942 et seq.) in order to provide sites necessary for the disposal of dredged material from Coos Bay until such time as rulemaking for ocean disposal sites for continuing use can be completed. The purpose of this notice is to provide the public with an opportunity to comment on the proposed final designation, as EPA approved ocean dumping sites, of three sites in the Pacific Ocean offshore of Coos Bay, Oregon, for the continuing disposal of dredged material.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., ("NEPA") requires that Federal agencies prepare an EIS on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions.

The Corps of Engineers and EPA have prepared a draft EIS entitled "Coos Bay Dredged Material Ocean Disposal Site Designation Environmental Impact Statement." On September 7, 1984, a notice of availability of the draft EIS for public review and comment was published in the Federal Register (49 FR 35413). The draft EIS presented information needed to evaluate the

suitability of ocean disposal areas for final designation for continuing use and was based on a series of disposal site environmental studies. In the draft EIS EPA determined that the existing sites and the new site were compatible with the general criteria and specific factors and that the sites were the preferable locations for the disposal of dredged material. The public comment period on this draft EIS closed October 22, 1984. Anyone desiring a copy of the EIS may obtain one from the address given above.

The action discussed in the EIS is the designation for continuing use of ocean dredged material disposal sites offshore of Coos Bay, Oregon. The purpose of the designation is to provide an environmentally acceptable location for the ocean disposal of materials dredged from the Coos Bay Channel System when ocean disposal is found to be necessary for some dredged material. The need for ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. An evaluation of alternatives for land-based disposal has recently been updated in a memorandum to the Record (9/5/85) by Eric Braun and is available for inspection at the above addresses.

The memorandum states that the only upland disposal site currently in use, known as the Eastside Site, is between river mile 12 and 15. The current dikes are inadequate as shown by recent failures. Extensive dike rehabilitation would be required prior to any use at this site. Thus, it is expected to have limited capacity for future disposal. Two disposal islands have been created in the past, and these sites could possibly be used for some material by raising the dikes. However, raising the dikes on these disposal islands is not considered appropriate at this time due to concerns related to engineering considerations and potential impacts to the surrounding tidal area. Therefore, their remaining capacity is also very limited.

Two other potential sites have been considered near the navigation channel. The site consisting of a diked marsh was rejected because filling of wetlands was not considered environmentally preferable. The other site presently has no capacity with the existing dike configuration, and raising the dikes is not considered feasible from an engineering point of view. Most other sites within reasonable pumping distance from the channel have been considered in the past. Locating sites farther from the channel would require

the use of booster pumps and increase costs.

The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation for continuing use and is based on one of a series of disposal site environmental studies. The environmental studies and final designation process are being conducted in accordance with the requirements of the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Proposed Site Designation

The two existing interim designated sites, termed E and F, have been used since at least 1951 for the ocean disposal of about 975,000 cubic yards of dredged material annually. Dredging is intermittent, for several months in each year. The new site H was used for a test disposal of dredged material in August 1981.

Site E is located approximately 1.3 nautical miles offshore of the entrance to Coos Bay and occupies an area of about 0.13 square nautical miles. Water depths within the area average 17 meters. It is approximately rectangular with coordinates as follows:

43°21'59" N., 124°22'45" W.;
43°21'48" N., 124°21'59" W.;
43°21'35" N., 124°22'05" W.;
43°21'46" N., 124°22'51" W.

Site F is located approximately 1.3 nautical miles offshore of the entrance to Coos Bay and occupies an area of about 0.13 square nautical miles. Water depths within the area average 24 meters. It is approximately rectangular with coordinates as follows:

43°22'44" N., 124°22'18" W.;
43°22'29" N., 124°21'34" W.;
43°22'16" N., 124°21'42" W.;
43°22'31" N., 124°22'26" W.

Site H is located approximately 3.7 nautical miles offshore of the entrance to Coos Bay and occupies an area of about 0.13 square nautical miles. Water depths within the area average 55 meters (30 fathoms). It is approximately rectangular with coordinates as follows:

43°23'53" N., 124°22'48" W.;
43°23'42" N., 124°23'01" W.;
43°24'16" N., 124°23'26" W.;
43°24'05" N., 124°23'38" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective

monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated. All three of the proposed sites conform to the five general criteria except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the EIS, that no economic benefit would be obtained by selecting sites off the Continental Shelf instead of those proposed in this action. In addition, no adverse environmental impacts are expected at the sites that are proposed for designation today.

The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; the specific 11 factors are given in § 228.6 and are used in evaluating a proposed disposal site to assure that the general criteria are met. EPA established these 11 specific factors to constitute an environmental assessment of the impact of the site for disposal. The criteria are used to make critical comparisons between the alternative sites and are the bases for final site selection. The characteristics of the two existing sites and one new site are reviewed below in terms of these 11 factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* [40 CFR 228.6(a)(1).] The two existing sites are termed E and F. The new site is termed H. Corner coordinates, size, depth of water, and distance from coast for the three sites are given above.

The bottom topography of sites E and F is generally flat with some gentle sand swells. The bottom topography of site H is generally flat with some gentle silty-sand swells (wave forms).

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* [40 CFR 228.6(a)(2).] Breeding, spawning, nursery and/or passage of commercially and recreationally important finfish and shellfish species occur throughout the ocean area offshore of Coos Bay. There may be some minor interference with the biological activities during the actual dredged material disposal operations. However, the disposal area would be quite limited at any one time and can be easily avoided by motile living organisms. Benthic habitat and community would be altered by disposal activity with possible temporary perturbations to the food chain. The disposal sites are extremely small in

comparison with the overall area available for breeding, spawning, nursery, and passage purposes.

The only resource that might be considered to be limited is an area between the 40- and 52-fathom contour where scallops were found in densities high enough to support a fishery. Sites E and F are located in the vicinity of the 10- to 12-fathom contour, well shoreward of the scallop bed, while site H is located in the vicinity of the 29- to 36-fathom contour, south of the scallop bed. However, since the sediments are transported from site H predominantly in the southerly direction and downslope during the dumping season, they are highly unlikely to move toward the scallop bed. In addition, recent information indicates that the scallop beds have been fished out; thus, adverse impacts are unlikely.

3. *Location in relation to beaches and other amenity areas.* [40 CFR 228.6(a)(3).] Sites E and F are each located within 1.6 nautical miles of a beach. The proximity of sites E and F to the beaches, coupled with the frequency of onshore transport and seasonal ocean currents parallel to the coast, contributes to a potential for onshore transport from those two sites. Any material transported toward the beaches would be a combination of the naturally occurring sands in the vicinity of sites E and F and the marine sands planned for disposal at these sites. These materials would have no significant effect on the beaches should onshore transport occur. Site H is located about 3.7 nautical miles from the nearest beach. Because of the depth and distance from shore of site H and the predominance of north-south alongshore currents, there is also little likelihood of dredged material disposed of at site H reaching any beach.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* [40 CFR 228.6(a)(4).] Approximately 1.3 million cubic yards of predominantly clean sand of marine origin (Type 1) will be disposed of at sites E and F during several months of each year. The grain size of this material is relatively constant at 0.2 to 0.3 mm, and volatile solids content ranges between 0.1 and 2.0 percent. Type 1 material is found between the channel entrance and river mile 12.

Approximately 400,000 cubic yards of fine-grained sand with high organic solids content (Type 2 and 3) will be disposed of at site H on a two- to four-year cycle. The median grain size of this material varies from 0.2 to 0.006 mm, and volatile solids content ranges from 2.0 to 20 percent. Type 2 material is

found between river mile 12 and river mile 14, and Type 3 material is found above river mile 14. Type 3 material contains increased levels of total sulfides, ammonia-nitrogen, oil and grease, petroleum hydrocarbons, and trace metals compared to materials from below river mile 14.

The dredged material will be transported to the disposal sites by hopper dredges and ocean-going barges, and the material will be released at the sites through subsurface release mechanisms. None of the dredged material will be packaged in any way.

Dredged material may not be approved for ocean dumping unless it meets the criteria in 40 CFR Part 227.

5. *Feasibility of surveillance and monitoring.* [40 CFR 228.6(a)(5).] Surveillance and monitoring are both feasible; both dredging and disposal operations can be observed from shore or from vessels. The sites are near to shore and relatively shallow which facilitates routine monitoring.

Monitoring by EPA, the Corps of Engineers, and permittees, as required, will continue for as long as the sites are used. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at that site.

Monitoring at site H will begin with the first disposal action at the site in the fall of 1985. Monitoring will be conducted at site H to determine if post-disposal movement of dredged material will have any impacts on adjacent resources of importance. Pre- and post-disposal bathymetry surveys will be conducted with additional surveys scheduled as needed. Representative sediment samples will also be collected periodically in and around the disposal site and analyzed for parameters of interest. These samples will be compared with pre-disposal samples and samples from the dredging area to allow detection of movement and comparison with theoretical transport. If movement of material appears likely to impact a known resource, additional analyses of the benthic community or specific resource will be undertaken. Analysis of the dredged material will be used to identify chemical or other contaminants which would require monitoring. The monitoring program will be finalized as part of the permit development process.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* [40 CFR 228.6(a)(6).] Average currents in the region generally flow parallel to bathymetric contours with downslope components predominating over upslope

components near the bottom. Local current speed and direction, however, reflect the variability of local winds. Since ocean disposal operations are generally restricted to April through November, the predominant direction of transport of the dredged material during dumping will be southward at 10 to 30 cm/s. Northerly transport may occur during the late fall.

Dredged material disposed at sites E and F will be rapidly reworked by strong tidal and surface wave generated currents. Winter reworking will be especially intense, and will result in the erasure of any mounding and the distribution of coarser size fractions of the dredged material over the tidal delta. Finer size fractions will be transported with the net or prevailing currents.

Coarse grain dredged material will remain generally stable at site H, gradually spreading over the bottom of the site. Finer grained material will be more mobile and tend to be spread in the direction of the prevailing currents. Both the coarser grained and finer grained sediments would probably be mobilized during winter storm events and spread in thin layers over and around the site. There may be slight mounding in site H over a number of years due to the increased depth and associated slower currents in the vicinity.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* [40 CFR 228.6(a)(7).] Previous disposal at sites E and F has averaged 975,000 cubic yards annually of coarse grained marine sands. This disposal has produced a seaward extension of the tidal delta as evidenced by noticeable seaward bulges in the bathymetric contours of the tidal delta in the vicinity of the sites. No topographic mounding has occurred at either of the sites. Short-term increases in the turbidity of the water column have occurred, but the impact of these has been minor due to the coarse-grained nature of the material disposed at the sites. No significant biological impacts have been associated with the past disposal at sites E and F.

The test dump of type 3 material (finer grained dredged material with higher volatile solids and inorganic material content) made at site H indicates that no significant mounding occurred. A short-term impact on turbidity occurred; however, it was comparable to natural events. The benthic community was impacted in the area of disposal immediately after disposal; however, a steady recovery to predisposal conditions was observed, suggesting

that disposal impacts on the benthos were of short duration. In addition, the erasure or mixing of the disposal mound beyond recognition within 19 months suggests that long-term impacts on the biota are unlikely at site H.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* [40 CFR 228.6(a)(8).] Except for marine navigation, commercial or recreational use of the sites is minimal if at all. Disposal of dredged material at the sites will have little if any effect on marine navigation.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* [40 CFR 228.6(a)(9).] Water quality analyses for surface and bottom water indicate that the water at all the sites is typical of seawater of the Pacific Northwest. As discussed above, there is great variation in sediment movement during the seasonal current shifts along with major reworking during the winter storm period. Upwelling during the spring and summer brings subsurface water to the surface. Although the scale and duration of these events are extremely variable, upwelling keeps surface waters relatively cool through the summer. Turbidity within the water column maximizes near the bottom, the top of the transition zone between high density bottom water and low density surface water, and in surface waters. The Coos Bay water mass would also contribute turbid waters to surface layers during periods of high runoff.

The ecology of the area is typical of the Oregon coast. Distribution and abundance of pelagic fish are closely tied to the influence of the ocean currents; and the abundance, diversity, and species composition of the benthic community are tied to the character of bottom conditions. As water depth increases, sea flood currents and sediment grain size decrease while organic, chemical constituents, and biological abundance tend to increase. The benthic community in the nearshore region (sites E and F) has the lowest abundance and diversity. In addition, it is dominated by burrowing species and deposit or opportunistic feeders.

The region seaward of site H is characterized by the most abundant and diverse benthic community. The community is dominated by filter and surface feeders. The zone between the nearshore and the outer area (vicinity of site H) can be classified as a physical and biological transition zone. Species composition in the shallow portion is

most similar to that of the nearshore region; species composition of the deeper portion is more similar to the outer region. Seasonal variation in abundance is high.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* [40 CFR 228.6(a)(10).] There are no known components in type 1 dredged material or its method of disposal that would attract or result in recruitment of nuisance species. Surveys at sites E and F (previously used) did not detect the development or recruitment of nuisance species. Although the increased organic content of types 2 and 3 material has some potential for recruitment of nuisance species, no major shifts in benthic community composition were observed at site H after the test dump. Therefore, the development or recruitment of nuisance species at any of the proposed disposal sites is not expected.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* [40 CFR 228.6(a)(11).] The Oregon State Historic Preservation Office indicated that the area of the project is not of historic significance and, since ground disturbance of previously undisturbed ground is minimal, there will be no likely impact to archeological resources.

E. Proposed Action

The existing sites and the new site are compatible with the general criteria and specific factors used for site evaluation. EPA considered whether it would be preferable to designate a deepwater site beyond the edge of the Continental Shelf. For the following reasons, EPA has determined that the existing sites and the new site are the preferable sites for the disposal of dredged material. These factors are discussed in greater detail in the EIS.

The existing sites and the new site are 1.3 nautical miles and 3.7 nautical miles offshore of the entrance to Coos Bay, respectively, whereas the deepwater site considered is more than 24 nautical miles offshore of the entrance to Coos Bay. Disposal costs and energy consumption involved in use of the deepwater site would be significantly greater than for the existing sites and for the new site due to greater transportation demands. In addition, disposal of the relatively clean (predominantly sand) sediments at sites closer to shore is expected to cause no adverse environmental impacts. Dredged material has been dumped at the existing sites (E and F), and the effects of disposal have been localized. Sites E and F will be restricted to the

disposal of type 1 material, which is predominantly coarser grained marine sands with low volatile solids content. Short-term impacts on the benthos have occurred due to dredged material disposal with rapid benthic recruitment and recolonization, suggesting limited long-term biological impacts. The new site (H) will be designated for disposal of type 2 and 3 material, which is finer grained dredged material with higher volatile solids content. The high benthic species diversity and large seasonal variation in abundance, along with the test dump observations, suggest that benthic recovery subsequent to disposal of type 2 and 3 material at site H will be rapid. Therefore, long-term biological impacts are not expected.

The designation of the two existing Coos Bay and the one new Coos Bay dredged material disposal sites as EPA Approved Ocean Dumping Sites is being published as proposed rulemaking. Management authority of these sites will be delegated to the Regional Administrator of EPA Region X. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

It should be emphasized, that, if an ocean dumping site is designated, such as 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.

F. Regulatory Assessments

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 proposed 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 proposal 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 proposed rule does not necessitate preparation of a Regulatory Impact Analysis.

This proposed rule does not contain any information collection requirement subject of 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: January 2, 1986.

Lawrence J. Jensen,

Assistant Administrator for Water.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be 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.

2. In Part 228, it is proposed to revise the section heading, remove paragraph (I), the Coos Bay Dredged Material Disposal Sites, from paragraph (a)(1)(i) of § 228.12 and add §§ 228.12(b) (24), (25), and (26) as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

(b) * * *

(24) Coos Bay Dredged Material Site E—Region X.

Location: 43°21'59" N., 124°22'45" W.; 43°21'48" N., 124°21'59" W.; 43°21'35" N., 124°22'05" W.; 43°21'46" N., 124°22'51" W.

Size: 0.13 square nautical mile.

Depth: Averages 17 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material in the Coos Bay area of type 1, as defined in the site designation final EIS.

(25) Coos Bay Dredged Material Site F—Region X.

Location: 43°22'44" N., 124°22'18" W.; 43°22'29" N., 124°21'34" W.; 43°22'16" N., 124°21'42" W.; 43°22'31" N., 124°22'26" W.

Size: 0.13 square nautical mile.

Depth: Averages 24 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material in the Coos Bay area of type 1, as defined in the site designation final EIS.

(26) Coos Bay Dredged Material Site H—Region X.

Location: 43°23'53" N., 124°22'48" W.; 43°23'42" N., 124°23'01" W.; 43°24'16" N., 124°23'26" W.; 43°24'05" N., 124°23'38" W.

Size: 0.13 square nautical mile.

Depth: Averages 55 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material in the Coos Bay area of types 2 and 3, as defined in the site designation final EIS.

[FR Doc. 86-1225 Filed 1-24-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 52, 56, 58, 61, 62, 110, 111, and 113

[CGD 81-030]

Marine Engineering; Vital System Automation

AGENCY: Coast Guard, DOT.

ACTION: Extension of comment period for proposed rules.

SUMMARY: This notice extends the public comment period on proposed rules for vital system automation on new ships and mobile offshore drilling units. The extended comment period is provided to satisfy requests for additional time to review the proposed rules. On September 23, 1985 the Coast Guard published a Notice of Proposed Rulemaking (50 FR 38608) regarding vital system automation on new ships and mobile offshore drilling units. The comment period closed December 23, 1985. Shortly before the end of the comment period requests for additional time to prepare and submit comments were received from the American Bureau of Shipping and others. The requests cited the extensive and comprehensive nature of the proposed rule as the reason they needed additional time. Due to the significance of this rulemaking the Coast Guard believes it is important to allow parties with relevant comments additional time to evaluate the proposal.

DATE: The public comment period is extended to February 21, 1986.

ADDRESSES: Comments referencing CGD 81-030 should be submitted to Commandant [G-CMC/21], U.S. Coast Guard, Washington, DC 20593. Comments may be delivered to, and will be available for inspection and copying at the Marine Safety Council, U.S. Coast Guard Headquarters, Room 2110, 2100 Second Street, SW., Washington, DC between the hours of 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Peter L. Randall, Office of Merchant Marine Safety (202) 426-2206.

Dated: January 22, 1986.

J.S. Gracey,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 86-1743 Filed 1-24-86; 10:39 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 86-1]

Common Carrier Services; Access Charges; Closed-end of WATS Lines; Peak/Off-Peak Pricing

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Common Carrier Bureau, acting pursuant to delegated authority, grants in part motions for extension of time for filing pleadings in response to a Notice of Proposed Rulemaking, published on January 7, 1986, at 51 FR 633. This action is taken in order to provide interested parties with adequate time to address the important issues raised in this proceeding.

DATES: Comments and reply comments on issues dealing with special access treatment of closed and WATS access lines and WATS resale will be due on January 27, 1986 and February 10, 1986, respectively. Comments and reply comments regarding peak/off-peak pricing and carrier common line cost recovery will be due on February 3, 1986 and February 18, 1986, respectively.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Sandra Eskin, Common Carrier Bureau (202) 632-9342.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 69

Access charges, communications common carriers.

Order

In the matter of WATS-Related and Other Amendments of Part 69 of the Commission's Rules; CC Docket No. 86-1.

Adopted: January 15, 1986.

Released: January 17, 1986.

By the Chief, Common Carrier Bureau.

1. We have before us two Motions for Extension of Time in connection with the comment cycle established in the above-captioned proceeding. In a Notice

of Proposed Rulemaking (*Notice*), released on January 6, 1986, were provide that comments would be due January 27, 1986, with reply comments due February 10, 1986.

2. On January 10, 1986, MCI Telecommunications (MCI) filed a motion requesting that we extend the time for filing comments to February 5, 1986, with an extension of the time for filing reply comments to February 26, 1986.¹ On the same date, the National Telephone Cooperative Association (NTCA) filed a motion to bifurcate the issues to be examined in this proceeding and seeks an extension of time for filing comments on certain issues. NTCA requests that we maintain the established pleading cycle for comments and replies on the issues dealing with the special access treatment of closed

end WATS access lines and WATS resale. It asks that we extend the filing dates on issues relating to time-of-day access pricing and recovery of carrier common line costs based on terminating usage to March 27, 1986, for comments, and April 28, 1986, for reply comments.

3. It is the policy of the Commission, set forth in § 1.46(a) of the Commission's rules, 47 CFR 1.46(a) (1984), that extensions of time shall not be routinely granted. However, because of the large number of filings on related matters due during this period and our desire to receive thoughtful filings on the important issues raised in this proceeding, we are revising the pleading cycle and adopting a bifurcated schedule for the filing of pleadings.

4. Comments on the issues dealing with special access treatment of closed end WATS access lines and WATS resale, discussed in Sections III. and IV. of the *Notice*, will be due on January 27, 1986, with reply comments on these issues due February 10, 1986. Comments on the issues dealing with peak/off-peak pricing and carrier common line cost

recovery, discussed in Sections V. and VI. of the *Notice*, will be due on February 3, 1986, with reply comments on these issues due February 18, 1986. We believe that this revised schedule will provide interested parties with adequate time to address the important issues raised in this proceeding.

5. Accordingly, it is ordered, that the Motion for Extension of Time by MCI Telecommunications, and the Motion To Bifurcate Issues and for Partial Extension of Time by the National Telephone Cooperative Association, are granted to the extent discussed herein. This action is taken pursuant to sections 4(i) and (j) and 201 of the Communications Act of 1934, 47 U.S.C. 154(i), (j) and 201 (1982), and §§ 0.91(h) and 0.291 of the Commission's Rules, 47 CFR 0.91(h), 0.291.

Federal Communications Commission.
Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 86-1614 Filed 1-23-86; 8:45 am]

BILLING CODE 6712-01-M

¹ MCI's proposal to extend the reply comment date to February 26, 1986, is based on the assumption that the established reply comment date is February 14, 1986, rather than February 10, 1986. GTE Sprint and ALC Communications filed comments in support of MCI's Motion for Extension of Time.

Notices

Federal Register

Vol. 51, No. 17

Monday, January 27, 1986

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

Cooperative Agreements; Colorado State University Research Foundation

AGENCY: Office of International Cooperation and Development, USDA.

ACTION: Notice of Intent to Award a Cooperative Agreement.

ACTIVITY: The Office of International Cooperation and Development intends to award a cooperative agreement to the Colorado State University Research Foundation (CSURF) to continue Technical Assistance for Manufacturing Nutritious, Low-Cost Weaning Foods.

Authority: Section 1458 of The National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

The Office of International Cooperation and Development (OICD) announces the availability of funds for fiscal year 1986 to enter into a cooperative agreement with the Colorado State University Research Foundation (CSURF), in the amount of \$174,000. The agreement is an extension of on-going work being conducted by the Research Institute of Colorado (RIC) which is terminating its activities. Technical personnel and resources currently at RIC will be available to CSURF.

Funds will be utilized by the CSURF for research and development in the field of low-cost extrusion cooking (LEC) for production of low-cost nutritious foods. LEC was developed by USDA in cooperation with RIC and its predecessor, Colorado State University over the last 11½ years. LEC facilities and technical expertise is available to CSURF. On-going projects in the Philippines (Rice Brand Stabilization and Rice Bran Oil Recovery) and Guyana (Improvements in Guyana Weaning Food Plant) will be continued

by CSURF. This proposed agreement will allow the work to continue efficiently with no interruptions.

Based on the above, this is not a formal request for applications. It is estimated that approximately \$174,000 will be available in Fiscal Year 1986 to support this work. It is anticipated that the cooperative agreement will be funded from 1 March 1986 through 30 September 1986.

Information may be obtained from: Dr. David A. Fellers, Food Technology Branch, Technical Assistance Division, Office of International Cooperation and Development, U.S. Department of Agriculture (#58-319R-6-019).

Dated: January 22, 1986.

Allen Wilder,

Chief, Management Services Branch.

[FR Doc. 86-1598 Filed 1-24-86; 8:45 am]

BILLING CODE 3410-DP-M

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement Rates for 1986

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustment to the reimbursement rates for meals served in the Summer Food Service Program for Children. These adjustments reflect changes in the Consumer Price Index and are required by statute governing the Program.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION: Classification: This notice has been reviewed under Executive Order 12291 and has not been classified as major because it will not have an annual effect on the economy of \$100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation or on the ability of U.S.

enterprises to compete with foreign based enterprises in domestic or foreign markets. This notice has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this notice will not have a significant economic impact on a substantial number of small entities.

This notice is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V (48 FR 29112, June 24, 1983).) In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR Part 225).

(Catalog of Federal Domestic Assistance Programs No. 10.559)

Background

Pursuant to section 13 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the Summer Food Service Program for Children (7 CFR Part 225), notice is hereby given of adjustment in Program payments for meals served to children participating in the Summer Food Service Program for Children during the 1986 Program. Adjustment are based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1984 through November 1985. The new reimbursement rates in cents are as follows:

Maximum Per Meal Reimbursement Rates

Operating Costs

Breakfast.....	88.25
Lunch or Supper.....	158.50
Supplement.....	41.50

Administrative Costs

a. For meals served at rural or self-preparation sites:

Breakfast.....	8.25
Lunch or Supper.....	15.00
Supplement.....	4.00

b. For meals served at other types of sites:

Breakfast.....	6.50
Lunch or Supper.....	12.50
Supplement.....	3.25

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served. The above reimbursement rates, before being rounded-off to the nearest quarter-cent, represented a 4.03 per cent increase during 1985 (from 337.7 in November 1984 to 351.3 in November 1985) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Authority: Secs. 803, 807, 809, 816, and 817, Pub. L. 97-35, Secs. 203 and 206, Pub. L. 96-499, Secs. 5, 7, 10, Pub. L. 95-627, 95 Stat. 3603 (42 U.S.C. 1771); Sec. 2, Pub. L. 95-166, 91 Stat. 1325 (42 U.S.C. 1761); Sec. 7, Pub. L. 91-248, 84 Stat. 211 (42 U.S.C. 1859a), unless otherwise noted.

Dated: January 2, 1986.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 86-1625 Filed 1-24-86; 8:45 am]

BILLING CODE 3410-30-M

ARCTIC RESEARCH COMMISSION

Notice of Meetings

Notice is hereby given that the Arctic Research Commission will meet with the Governor, State of Alaska and with members of his cabinet and with the Alaska State Legislature Senate and House Committee on Resources in Juneau, Alaska on 31 January 1986.

The meetings will begin at 7:00 a.m. in the Sheffield Hotel, Egan Drive, Juneau, Alaska. Matters to be considered include: 1. Chairman's items, 2. Approval of Report of Meetings held 14-15 November 1985, 3. Annual Report to President and Congress, 4. Statement by Chairman to Governor and Legislature, 5. Discussion of draft report "National Needs and Arctic Research—A Framework for Action", 6. Dates of Future Meetings, and 7. Other Business.

At 10:00 a.m. the Commission will be introduced to House of Representatives in the State Capitol Building, 2nd Floor, which is located at Main and 4th Street, Juneau, Alaska.

At 10:15 a.m. the Commission will have joint meeting with Governor's Science and Engineering Advisory Committee. The major topic will be a discussion of Arctic research needs. The meeting will be held in the Governor's Conference Room, 3rd Floor, State Capitol Building.

At 11:00 a.m. the Arctic Research Commission will meet with the Governor and his cabinet to discuss Arctic research needs. Matters to be presented include: 1. State of Alaska Research Policy and Needs by Governor Sheffield, 2. Arctic Research Policy and Possible Joint State/Federal Interaction by Dr. James Zumberge. The meeting will be held in the Governor's Conference Room, 3rd Floor, State Capitol Building.

At 1:30 p.m. the Commission will meet with a joint session of the House and Senate Committees on Resources in the State Capitol Building, 2nd Floor, Butrovitch Room. Matters to be considered include discussion of Arctic research needs and possible joint State/Federal research programs.

At 3:30 p.m. a Press Conference will be held in the State Capitol Building, 3rd Floor, Governor's Conference Room.

The Commission will meet in Executive Session from 6:30-8:30 p.m. on 31 January. Matters to be discussed in the Executive Session will include: 1. Composition of Group of Advisors, 2. Future Activities of the Commission, and 3. Commission Budgetary Matters.

Contact Person for More Information: W. Timothy Hushen, Executive Director, Arctic Research Commission (213) 743-0970.

W. Timothy Hushen,

Executive Director, Arctic Research Commission.

[FR Doc. 1670 Filed 1-24-86; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Survey of Income and Program Participation—1986 Panel Wave 2
Form Number: Agency—SIPP-6200, SIPP-6205L; OMB—0607-0425

Type of Request: Revision of a currently approved collection

Burden: 29,400 respondents; 14,700 reporting hours

Needs and Uses: This survey is used to collect data that will support policy and program planning. The data is used to provide the executive and legislative branches with improved statistics on income distribution and data not previously available on eligibility for and participation in government programs

Affected Public: Individuals or households

Frequency: One time only

Respondent's Obligation: Voluntary

OMB Desk Officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census

Title: 1986 Test Censuses of Central Los Angeles County and East Central Mississippi—Content Reinterview

Form Number: Agency—DC-5; OMB—NA

Type of Request: New collection

Burden: 2,750 respondents, 680 reporting hours

Needs and Uses: These test censuses will enable Census to compare/evaluate information as to the accuracy and consistency of answers reported through the self-administered, mail-return questionnaires used

Affected Public: Individuals or households

Frequency: One time only

Respondent's Obligation: Mandatory

OMB Desk Officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: January 21, 1986.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 86-1701 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Order No. 322]

Resolution and Order Approving the Application of the Louisville and Jefferson County Riverport Authority for a Special-Purpose Subzone in Lexington, KY, Adjacent to the Louisville Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, filed with the Foreign-Trade Zones Board (the Board) on April 2, 1985, requesting special-purpose subzone status for the typewriter and printer manufacturing plant of International Business Machines Corporation in Lexington, Kentucky, adjacent to the Louisville Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone for International Business Machines Corporation in Lexington, Kentucky

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone No. 29, has made application (filed April 2, 1985, Docket

No. 7-85, 50 FR 16329) in due and proper form to the Board for authority to establish a special-purpose subzone at the typewriter and printer manufacturing plant of International Business Machines Corporation (IBM) in Lexington, Kentucky, adjacent to the Louisville Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed April 2, 1985, the Board hereby authorizes the establishment of a subzone at the IBM plant in Lexington, Kentucky, designated on the records of the Board as Foreign-Trade Subzone No. 29D at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury to damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC this 13th day of January 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-1640 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 323]

Resolution and Order Approving the Application of the North Carolina State Department of Commerce for a Special-Purpose Subzone in Mecklenburg County, NC, Adjacent to the Charlotte Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the North Carolina State Department of Commerce, grantee of Foreign-Trade Zone 57, filed with the Foreign-Trade Zones Board (the Board) on June 5, 1985, requesting authority for a special-purpose subzone for the printer, banking equipment and electronic assemble manufacturing plant of International Business Machines Corporation in Mecklenburg County, North Carolina, adjacent to the Charlotte Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Mecklenburg County, North Carolina, Adjacent to the Charlotte Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining

foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the North Carolina State Department of Commerce, grantee of Foreign-Trade Zone No. 57 has made application (filed June 5, 1985, Docket No. 18-85, 50 FR 27472) in due and proper form to the Board for authority to establish a special-purpose subzone at the printer and electronic equipment manufacturing plant of International Business Machines Corporation (IBM) in Mecklenburg County, North Carolina, adjacent to the Charlotte Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed June 5, 1985, the Board hereby authorizes the establishment of a subzone at the IBM plant in Mecklenburg County, North Carolina, designated on the records of the Board as Foreign-Trade Subzone No. 57A at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations;

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding

compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC this 13th day of January 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-1639 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-559-501]

Final Negative Countervailing Duty Determination; Carbon Steel Wire Rod From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Singapore of carbon steel wire rod. Therefore, our final countervailing duty determination is negative.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Laura Winfrey, David Levine, or Barbara Tillman of the Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1784, 377-8498 or 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

On the basis of our investigation, we determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended, (the Act) are being provided to manufacturers, producers, or exporters in the Republic of Singapore.

Case History

On August 9, 1985, we received a petition in proper form from Atlantic Steel Co., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co. on behalf of the U.S. industry producing carbon steel wire rod. 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 Singapore of carbon steel wire rod directly or indirectly receive benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 29, 1985, we initiated such an investigation (50 FR 36130). We stated that we expected to issue a preliminary determination by November 4, 1985.

Since Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the product under investigation is dutiable, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product materially injure, or threaten material injury to, a U.S. industry.

We presented a questionnaire concerning the allegations to the government of Singapore in Washington, DC on September 9, 1985. On October 18, 1985, we received responses to our questionnaire from the government of Singapore, National Iron and Steel Mills Ltd. ("NISM"), and Kloeckner Singapore Pte. Ltd. ("Kloeckner"). According to the response of the government of Singapore, NISM was the sole producer and Kloeckner the sole exporter in Singapore of carbon steel wire rod to the United States. On November 4, 1985, we preliminarily determined that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of wire rod in Singapore.

At verification, we found that the trading company Mitsui & Co., Ltd. ("Mitsui") had exported a small amount of carbon steel wire rod to the United States in March 1985. We verified that Mitsui did not use any of the programs under investigation. On December 20, 1985, the government of Singapore submitted an amendment to the original response indicating the Mitsui shipment.

A hearing was requested and took place January 7, 1986. We received briefs from the parties to the proceeding on January 2 and January 10, 1986.

Scope of the Investigation

The product covered by this investigation is carbon steel wire rod, which is a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross-section, not under 0.20 inch nor over 0.74 inch in diameter. Carbon steel wire rod is currently classifiable under items 607.14, 607.17, 607.22 and 607.23 of the *Tariff Schedules of the United States, Annotated (TSUSA)*.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring bounties or grants ("the review period") is the calendar year 1984. Although there were no exports of the subject merchandise during our review period, there were exports of wire rod during 1985. Therefore, we have investigated any potential benefits that may have been received during 1985. The responses of the government of Singapore and Kloeckner and the results of verification indicate that neither Kloeckner nor Mitsui used any of the programs under investigation during the review period or in 1985. Based upon our analysis of the petition, the responses submitted by the government of Singapore, NISM and Kloeckner to our questionnaires, the verification, and comments submitted by petitioners and respondents, we determine the following.

I. Programs Determined Not To Confer Bounties or Grants

We determine that bounties or grants are not provided to manufacturers, producers, or exporters of wire rod in Singapore under the following programs:

A. Location in Industrial Estates

Petitioners alleged that Singapore carbon steel wire rod manufacturers, producers, or exporters may receive benefits based on their location in "government-backed" industrial estates. Petitioners alleged that these estates provide facilities such as factory buildings and that firms located in these estates face lower property tax rates. The largest of these estates is Jurong Town and petitioners alleged that Singapore wire rod manufacturers are located in Jurong.

There are 23 industrial estates located at various places throughout Singapore. Jurong Town is the largest of the industrial estates. All of the industrial estates are owned and managed by the Jurong Town Corporation (JTC), which is a government corporation. Seventy percent of the work force in Singapore is

located in the industrial estates, and virtually every industry is represented.

Location in industrial estates and rental charges cannot be considered countervailable unless the government limits which industries can locate in the industrial estates, or unless the government establishes criteria for terms on industrial estate rentals which are not neutral in application, but rather based on industry or regional preferences.

JTC leases out three types of property in the industrial estates: (1) Industrial land; (2) standard factory buildings; and (3) flatted factories. At verification, we found that NISM is the only company subject to this investigation which is located in an industrial estate and it leases only land from JTC. We verified that the property tax paid on industrial estate property is the same as that paid by all companies in Singapore (23 percent). We found that any manufacturing company in any industry may locate in an industrial estate, and that a large number and a wide variety of industries are in fact located in industrial estates in Singapore. These include textiles, transportation, cement, computer, chemical, rubber, plastics, basic metals and paper industries. We also verified that JTC sets and applies rental rates and rent escalation terms consistently for all JTC tenants in all the industrial estates. Although some of the rental rates differ in and between industrial estates, we found that this variance is based on differences in property values rather than on any criteria set out by the government of Singapore. In particular, we found no indication that JTC has established criteria for rental charges or use of any facilities that are based on industry or regional factors rather than neutral factors.

Accordingly, we determine that location in industrial estates does not confer a bounty or grant because such location is not limited to a specific enterprise or industry, or group of enterprises or industries, and the rental terms on property and facilities in all the industrial estates are neutral in application and not based on industry or regional preferences.

B. Rebate on Industrial Estate Rentals by JTC

According to the responses of the government of Singapore and NISM, rebates of 5 to 15 percent were given on JTC warehouse and land rentals for a period of 17 months beginning on August 1, 1985. We preliminarily determined that the information submitted in the responses was insufficient to determine

if a bounty or grant had been bestowed on the product under investigation.

At verification, we found that the JTC rebate scheme was introduced in April 1985 as a 10 percent rebate in order to counteract the declining demand for industrial property in all of Singapore. The rebate was increased in August 1985 to 15 percent. We also verified that hundreds of companies in all the industrial estates, representing many industries, had been offered 15 percent rebates. Since the rental rebate program applies consistently throughout all the industrial estates, the program effectively constitutes a change in rental rates. Therefore, the test we set out in section A above applies to the JTC rebate program, and we determine that this program does not confer a bounty or grant on the product under investigation because it is not limited to a specific enterprise or industry, or group of enterprises or industries.

C. Property Tax Rebates

Although not alleged by petitioners and not included in our notice of "Initiation of Countervailing Duty Investigation: Carbon Steel Wire Rod from the Republic of Singapore" (50 FR 36130 (1985)), respondents included in their responses a reference to property tax rebates. This scheme involves a 30 percent rebate on property taxes paid for all industrial and commercial properties for 1 and 1/2 years beginning July 1, 1985. We verified that this measure applies equally to all industrial and commercial property "owners" in Singapore, where "owners" are defined to be all property holders for at least a three year term. Only owners are required to pay property taxes in Singapore. Therefore, we determine that this practice does not provide a bounty or grant because it is not limited to a specific enterprise or industry, or group of enterprises or industries.

D. Long-Term Loans from the Development Bank of Singapore (DBS)

Although not alleged by petitioners and not included in our notice of initiation, NISM provided information in its response that it received long-term financing from the DBS. We found that, although DBS was established in 1968 as a government development bank, since 1973 it has functioned as an ordinary commercial bank. We verified that DBS financing is available to a wide range of industries such as agriculture, mining, building construction, transport, storage, various manufacturing industries and financial institutions, and that its terms are pegged to the prime rate, similarly to financing by other commercial banks in

Singapore. Therefore, we determine that DBS financing is not countervailable because it is not limited to a specific enterprise or industry, or group of enterprises or industries and the terms of DBS loans are not inconsistent with commercial considerations.

E. Withholding Tax Exemption Under Section 13(2) of the Singapore Income Tax Act

This program was not alleged by petitioners to provide bounties or grants and the information on this program was first provided to the Department in the government of Singapore and NISM responses. During the review period NISM obtained an exemption from withholding taxes on certain interest paid by NISM to an Italian environmental protection device supplier. For purposes of the preliminary determination, we determined that the information submitted by the respondents was insufficient to determine if a bounty or grant had been bestowed on the product under investigation.

Section 13(2) of the Singapore Income Tax Act provides for a withholding tax exemption on all interest and royalty payments made to non-residents. We verified that the section 13(2) exemption applies, without restriction, to any enterprise or industry, or group of enterprises or industries in Singapore which paid such interest or royalties, and that a wide range of industries participated in this program, including shipping, airlines, banking, telecommunications, transportation, textiles and chemicals. Therefore, we determine that this program does not confer a bounty or grant on the product under investigation.

II. Programs Determined Not To Be Used

We determine that the following programs, listed in the notice of "Initiation of Countervailing Duty Investigation" were not used by the manufacturers, producers or exporters in Singapore of carbon steel wire rod during the review period.

A. Part II, III, IV, IVA, V, VI and VIB of the Economic Expansion Incentives Act

Petitioners alleged that the producers and exporters of carbon steel wire rod, based upon their classification under the Economic Expansion Incentives Act, benefit from exemptions on income tax and taxes on royalties, technical assistance fees, research and development costs, and interest paid to non-residents. (The exemptions for taxes on royalties and interest paid to non-residents are similar to the section

13(2) withholding tax exemption program discussed above.)

We verified that these exemptions were not claimed in the tax returns filed during the review period by the companies subject to this investigation. B. Research and Development Tax Incentives

Petitioners alleged that producers and exporters of wire rod receive special tax treatment for approved research and development projects.

We verified that this program was not used by the companies subject to this investigation during the review period.

C. Monetary Authority of Singapore Rediscount Facility and Working Capital Loan Fund of the Development Bank of Singapore (DBS)

Petitioners alleged that manufacturers, producers and exporters of carbon steel wire rod benefitted from preferential financing through the Monetary Authority of Singapore (MAS) which operates a rediscounting facility through which banks are permitted to rediscount qualified pre-export and export bills of exchange. Petitioners also alleged that the DBS operates a Working Capital Loan Fund which discounts export bills for up to 120 days at preferential rates.

We verified that the Rediscount Facility was not used during the review period by the companies subject to this investigation and that the DBS does not operate such a "Working Capital Loan Fund".

D. Singapore Economic Development Board

Petitioners alleged that the Singapore Economic Development Board (SEDB) provides assistance to manufacturers, producers, and exporters of carbon steel wire rod under the following programs:

1. The Capital Assistance Scheme under which the SEDB provides loans at preferential, below-market rates, as well as loan guarantees;

2. The Product Development Assistance Scheme under which the SEDB provides matching grants for financing substantial technical improvements in products or manufacturing processes; and

3. Labor Training which covers training overseas, in-house, and at training centers in Singapore.

We verified that none of the companies subject to this investigation received any benefits from these programs during the review period.

E. Double Deduction of Export Promotional Expenses

Petitioners alleged that firms exporting carbon steel wire rod to the

U.S. received benefits under Singapore tax law which allows a double deduction from gross corporate income of expenses incurred in export promotion.

We verified that this program was not used by the companies subject to this investigation during the review period.

Comments by Petitioners

Comment 1. Petitioners argue that ITA must consider the nature of the Singapore economy, which is heavily oriented to the development of manufacturing industries for export rather than domestic consumption. Petitioners argue that ITA should countervail government of Singapore programs, such as formation of the industrial estates, even though these programs are not limited to a specific enterprise or industry, or group of enterprises or industries, because ITA should consider these government of Singapore programs as export-oriented subsidies.

DOC Position. Even if we accept petitioners' characterization of the Singapore economy as export-oriented, we disagree with petitioners that we should infer from the character of the economy that all government of Singapore programs constitute export subsidies.

If we accepted this argument, the result would be that every government of Singapore program could be characterized as a subsidy, and section 771(5)(B) of the Act (defining domestic subsidies) would be a nullity with respect to so-called export-oriented economies. If Congress had intended such an extreme result, it easily could have specifically written it into the statute. Our position is consistent with *Certain Softwood Products from Canada*, (48 FR 24159, 24167, May 31, 1983), in which we concluded that "the mere fact that significant quantities of products made from stumpage are exported to the United States does not mean that stumpage programs confer an export subsidy." See also *Canned Tuna from the Philippines*, (48 FR 50133, October 31, 1983).

The *Michelin* decision upon which petitioners rely is not relevant. In that decision, the court did not address the definition of export subsidy. It merely upheld Treasury's determination that a subsidy existed when the Canadian and provincial governments provided grants, law-interest loans, and special tax provisions to two Michelin plants. Moreover, the *Michelin* decision upon which petitioners rely was vacated in *Michelin Tire Corp. v. United States*, Slip Op. 85-11 (January 29, 1985).

Comment 2. Petitioners argue that JIC provides land and building rents on a preferential basis, including the base rental terms as well as the provisions for rate escalations over time.

DOC Position. We disagree that JIC charges rents that are preferential. At verification, we found that the government of Singapore does not limit which industries can locate in the industrial estates and that the government employs neutral criteria for establishing base rental terms as well as the rate escalations. Although some of the rental rates differ in and between industrial estates, we found that this variance is based on differences in property values rather than on any industrial or regional criteria set out by the government of Singapore. See section on "Location in Industrial Estates."

Therefore, we are satisfied that JIC does not provide land, building rents or rent escalations on a preferential basis.

Comment 3. Petitioners argue that the rate charged by JIC for its annual rental fee is non-commercial and extremely low. Petitioners also argue that the verification report gives no indication of who determines the "average market purchase cost" or how that price is determined. Additionally, petitioners contend that the verification report does not identify normal commercial rental terms on property not administered by JIC.

DOC Position. The rental fees charged by JIC to its tenants are based on neutral criteria which are applied equally to all tenants in the industrial estates. Because we found that location in any industrial estate is not limited and the criteria used to determine rental rates are neutral and non-preferential, we determine that this program is not countervailable. Even if we were to find that location in industrial estates is limited to a specific enterprise or industry, or group of enterprises or industries, inconsistency with commercial considerations is not the appropriate standard for evaluating whether rental rates charged by JIC confer a subsidy. Instead, the correct test under section 771(5)(B) is whether preferential rates are being charged. See the *Preliminary Affirmative Countervailing Duty Determination; Carbon Steel Wire Rod from Saudi Arabia* (50 FR 47788) and the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod from Trinidad and Tobago* (49 FR 480).

Comment 4. Petitioners argue that commercial lenders in Singapore received rates of return far in excess of the amount charged by JIC on NISM's

rent and the differential between the two constitutes a subsidy.

DOC Position. As discussed above, the appropriate standard for identifying and measuring the subsidy conferred by JIC rental rates is whether the rates are preferential, not their commercial soundness.

Comment 5. Petitioners argue that rent escalation schemes are inconsistent with commercial considerations.

DOC Position. As discussed above, the appropriate standard for identifying and measuring the subsidy conferred by JIC rental rates is whether the rates are preferential, not their commercial soundness.

Comment 6. Petitioners state that the verification report does not discuss other facilities provided by JIC to industries located in the industrial estates.

DOC Position. The verification report does discuss the facilities in the industrial estates. As stated in the report, JIC leases out three types of property in the industrial estates: (1) Industrial land; (2) standard factory buildings; and (3) flatted factories. We found that the rental terms on these facilities in all the industrial estates are applied neutrally and consistently to all enterprises and industries. Moreover, the only company subject to this investigation which is located in an industrial estate, NISM, rents only industrial land from JIC.

Comment 7. Petitioners argue that JIC's alleged profits are the result of government subsidies and that the rental rate charged by the government of Singapore to JIC is less than the rate charged by JIC to its lessees. Petitioners also argue that JIC received countervailable loans and other benefits from the government of Singapore.

DOC Position. There is no basis for examining alleged subsidies from the government of Singapore to JIC since, even if the government of Singapore subsidizes JIC, any pass-through of such subsidies would be countervailable only if location in industrial estates was limited to a specific enterprise or industry, or group of enterprises or industries, or JIC applied its rental terms preferentially by industry or region.

Comment 8. Petitioners contend that the JTC rental rebates amount to countervailable benefits because they are inconsistent with commercial considerations and limited to certain eligible companies.

DOC Position. We found at verification that the JTC rental rebates are not limited to certain eligible companies or industries. Rather, eligibility is based solely on a tenant's

effective rental rate relative to the current market rate. We found that this criterion did not limit, *de jure* or *de facto*, the rebates to a specific enterprise or industry, or group of enterprises or industries. For the same reasons discussed above in our response to Petitioners' "Comment 3", the question of consistency with commercial considerations is irrelevant.

Comment 9. Petitioners argue that the 30 percent property tax rebates received by NISM must be presumed to be a subsidy because the Verification Reports do not adequately show how rebate recipients are selected and that such rebates are the norm rather than the exception.

DOC Position. Contrary to petitioners' claim, the Verification Report for the government of Singapore notes our finding that the rebates are issued automatically and not on a case-by-case basis. No selective criteria were found to apply. The Verification Report also shows that the rebates are the norm in Singapore rather than the exception since we listed many of the various industries included among rebate recipients.

Comment 10. Petitioners claim the section 13(2) withholding tax exemption is countervailable because it is applied on a selective basis and premised on governmental purposes not motivated by commercial considerations.

DOC Position. We found at verification that the eligibility criteria for the 13(2) exemption set out in the original questionnaire response from the government of Singapore were applied consistently in actual practice by the Finance Minister. No indications of selectivity were evident, *de jure* or *de facto*, since we found to our satisfaction that all of the exemption rejections were based entirely on failure to meet the objective, industry-neutral criteria set out in the government of Singapore response. We note that governmental tax policies are not generally motivated by commercial considerations.

Comment 11. Petitioners argue that the JTC rental rates, JTC rental rebates and other programs are countervailable even if more than a specific enterprise or industry, or group of enterprises or industries, receives their benefits because they are commercially unfair. Petitioners cite *Bethlehem Steel Corp. v. United States*, 590 F. Supp. 1237 (C.I.T. 1984) and *Cabot Corp. v. United States* Slip Op. 85-102 (C.I.T. October 4, 1985).

DOC Position. At verification, we found that in actual practice, JTC's rental program is available to all enterprises and industries and utilized by virtually all industries in Singapore

under consistently applied terms. We found that JTC sets its rental rates without preferentiality among the tenants; i.e., all tenants enter into a lease at a pre-set rate which is based on the market value of the property. We made similar findings with respect to JTC's rebate program, the withholding tax exemption and the property tax rebate. Thus, the Department is satisfied that these programs are available to more than a specific enterprise or industry, or group of enterprises or industries, and that the benefits are provided without preferentiality under section 771(5)(B)(ii) of the Act.

The Department does not agree with the *Cabot Corp.* opinion and has appealed that decision. The Department's refusal to find a subsidy absent an industry-specific or regional preference was upheld by the Court of International Trade in *Carlisle Tire and Rubber Co. v. United States*, 564 F. Supp. 834 (C.I.T. 1983).

Comment 12. Petitioners argue that the GATT Subsidies Code does not render the programs under investigation noncountervailable.

DOC Position. There is no agreed interpretation within the GATT Subsidies Code on the definition of what practices constitute a domestic subsidy. The U.S. Government believes that the standards set out in section 771(5)(B) of the Act are consistent with the Subsidies Code indicia for what constitutes a domestic subsidy. We have, therefore, examined the programs under investigation according to the U.S. countervailing duty law. For our explanation of the countervailability of the programs under investigation see "DOC Position" to Petitioners' "Comment 1".

Comments by Respondents

Comment 1. Respondents contend that any benefits received by NISM through JTC facilities, property tax rebates, and long-term DBS loans were not countervailable bounties or grants because these programs (1) were available to a wide range of industries, and (2) were on terms consistent with commercial practices.

DOC Position. We have determined that these programs are not countervailable because they are not limited to a specific enterprise or industry, or group of enterprises or industries. See the individual sections of the notice for our determination on each of these programs.

Comments 2. Respondents interpret the case law to require that the Department compare terms under which an alleged bounty or grant is provided with comparable commercial terms in

order to determine whether there is a countervailable benefit.

DOC Position. In examining alleged domestic subsidies in the form of loans, loan guarantees and equity provided to a specific enterprise or industry, or group of enterprises or industries, the Department considers whether commercial terms are comparable. Other forms of alleged subsidies are evaluated on different bases.

Comment 3. Respondents state that long-term loans provided by the Development Bank of Singapore (DBS) are not limited to specific enterprises or industries and are made in accordance with commercial considerations.

DOC Position. We agree. See the section on "Development Bank of Singapore (DBS) Financing."

Comment 4. Respondents argue that the section 13(2) withholding tax exemption is not limited to a specific enterprise or industry, or group of enterprises or industries, and therefore not countervailable.

DOC Position. We agree. See the section on "section 13(2) Withholding Tax Exemption."

Comment 5. Respondents state that JTC rental rebates are offered "across the board" to all tenants whose rents are more than 50 percent of JTC's current published rental rates. Respondents also argue that the JTC rental rebate is not a bounty or grant because it is not limited to a specific enterprise or industry, or group of enterprises or industries.

DOC Position. We agree. See section on "Location in Industrial Estates."

Comment 6. Respondents argue that the GATT Subsidies Code specifically seeks to avoid the countervailing or broad social programs which a government undertakes to develop the infrastructure of its country.

DOC Position. Even without direct reference to the GATT Subsidies Code, according to the U.S. countervailing duty law, the programs under investigation were found not to be countervailable.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During this verification, we followed normal procedures, including inspection of documents, discussions with government officials and on-site inspection of NISM's, Kloeckner's and Mitsui's records.

Administrative Procedures

In accordance with its regulations (19 CFR 355.35), the Department has afforded interested parties an opportunity to present oral views. A

public hearing was held on January 7, 1986. Also in accordance with the Department's regulations (19 CFR 355.34(a)), all written views have been received and considered in this determination.

This notice is published in accordance with section 303 and 705(d) of the Act (19 U.S.C. 1303, 1671d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration
January 22, 1986.

[FR Doc. 86-1707 Filed 1-24-86; 8:45 am]

BILLING CODE 2510-DS-M

[C-351-501]

Final Affirmative Countervailing Duty Determination; Fuel Ethanol From Brazil

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 of fuel ethanol in Brazil. The net subsidy is 2.60 percent *ad valorem*. In addition, we determine that "critical circumstances" do not exist with respect to the subject merchandise.

We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of fuel ethanol from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of this product in an amount equal to the net subsidy as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Alain Letort 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) 377-0186 (Letort) or 377-2438 (Tillman).

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain 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 of fuel ethanol in Brazil. for purposes of this investigation, the following programs are found to confer subsidies:

- PROALCOOL Industrial Credits to Distillers
- PROALCOOL Agricultural Credits to Distillers.
- FUNPROCUCAR Long-Term Loans.
- IAA Financing.
- Income Tax Exemption for Export Earnings.

We determine the net subsidy to be 2.60 percent *ad valorem* for all manufacturers, producers or exporters of fuel ethanol in Brazil.

Case History

On February 25, 1985, we received a petition in proper form from the Ad Hoc Committee of Domestic Fuel Ethanol Producers on behalf of the fuel ethanol industry in the United States. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters of fuel ethanol in Brazil 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. On March 15, the Oil, Chemical and Atomic Workers' International Union joined this proceeding as a co-petitioner.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on March 18, 1985, we initiated this investigation (50 F.R. 11526). We stated that we expected to issue a preliminary determination by May 21, 1985.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On April 12, 1985, the ITC preliminarily determined that an industry in the United States is threatened with material injury by reason of imports of fuel ethanol from Brazil (50 F.R. 15236).

On March 29, 1985, we received information from petitioners which established a reasonable basis to believe or suspect that the product under investigation benefitted from upstream subsidies in the form of subsidized sugar cane inputs. On April 23, 1985, pursuant to section 703(h) of the Act, we extended the due date for a preliminary determination to November 4, 1985 (50 F.R. 16727).

We presented questionnaires concerning the allegations to the government of Brazil in Washington, DC on April 15, May 14, June 3, June 17,

August 26, and September 2, 1985. We received responses to these questionnaires on June 7, July 26, September 16, and October 21, 1985. Based on the information contained in the June 7 response, we requested detailed responses from those producers who account for at least 60 percent of the fuel ethanol exported from Brazil to the United States. We also requested responses from the distillers' cooperative, as well as from four trading company exporters who accounted for over 85 percent of Brazilian exports of fuel ethanol to the United States.

We issued upstream subsidy questionnaires on May 24 and June 17, 1985, and received responses on July 26, September 16, and October 21, 1985. The responding distillers provided us with a list of those sugar cane growers who accounted for the top 60 percent of their supplies of sugar cane in 1984. We requested detailed responses from those sugar cane growers who represent the top 60 percent of this group. On the basis of information contained in these responses, we made a preliminary determination on November 4, 1985 (50 F.R. 46681).

From September 23 to October 11, 1985, we verified the information submitted by the government of Brazil, ethanol distillers, the distillers' cooperative, and trading companies. We conducted a supplementary verification of this information, in addition to verifying information submitted by upstream suppliers of sugar cane inputs, from November 18 to December 6, 1985. Prehearing briefs were submitted on December 11, 1985, the hearing being held on December 18, 1985. Post-hearing briefs were received by the Department on December 30, 1985, and additional comments were submitted on January 13, 1986.

Scope of Investigation

The product covered by this investigation is fuel-grade ethyl alcohol (also called fuel ethanol) for use as a motor fuel additive, which is currently classified in the *Tariff Schedules of the United States (TSUS)* under item numbers 427.88, 430.10, 430.20, and 432.10. Ethanol, when imported to be used as a fuel or in producing fuel, is subject to additional duties under *TSUS* item number 901.50.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. 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 April 26, 1984 issue of the *Federal Register* (49 F.R. 18006).

Petitioners have alleged that as much as 25 percent of the fuel ethanol industry in Brazil is in a state of bankruptcy, and that a large portion of that industry is both uncreditworthy and unequityworthy. We have addressed in the appropriate sections of this notice specific allegations of uncreditworthiness and unequityworthiness made by petitioners against certain companies. It is our practice to investigate only allegations that specific companies are uncreditworthy or unequityworthy during a specific time period. Therefore, we will not make a determination as to whether the fuel ethanol industry in Brazil is uncreditworthy or unequityworthy, in whole or in part.

For purposes of the final determination, the period for which we are measuring subsidization ("the review period") is calendar year 1984.

Based upon our analysis of the petition, the responses to our questionnaires, our verifications, and comments filed by petitioners and respondents, we determine the following.

I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of fuel ethanol under the following programs.

A. PROALCOOL Industrial Credits to Distillers

Petitioners have alleged that, under the guidelines of the Programa Nacional do Alcool (PROALCOOL) and subject to the approval of the Comissao Executiva Nacional do Alcool (CENAL), ethanol distillers receive long-term financing on terms inconsistent with commercial considerations for the construction, expansion, and modernization of ethanol production and storage facilities.

In its response, the government of Brazil stated that CENAL is the administering authority for the PROALCOOL program. Private companies that wish to produce ethanol must submit a project to CENAL for approval; once approval is secured, the company may obtain start-up credits under PROALCOOL. It will then receive production quotas for sugar cane and alcohol from the Instituto do Acucar e do Alcool (IAA).

Projects eligible for PROALCOOL financing include:

- Establishment, expansion, or modernization of a distillery;
- Installation of an agricultural storage facility;
- Production of raw materials for use in ethanol production;
- Research and support for the production of raw materials;
- Innovation and improvement of the technology related to the Production and use of ethanol; and
- Irrigation.

CENAL also takes into account the location and size of each project.

Once a project is approved, the producer becomes eligible for (1) PROALCOOL credit lines administered by the Banco do Brasil to finance the start-up costs, and (2) PROALCOOL long-term investment loans, which are to be paid back according to amortization schedules linked to the expected development of production.

Ethanol distillers had PROALCOOL long-term industrial loans outstanding during the review period. Typically, these loans were made for a duration of five years with a grace period of one year, in the case of storage facilities, or 12 years with a grace period of 3 to 4 years, in the case of production facilities. The maximum level of eligibility varied, depending on the category of borrower and the year in which the loan was taken out.

The interest rates on these loans also varied, depending on the year in which the loans were taken out. In the PROALCOOL program's early years, interest rates were fixed and did not include a mechanism to adjust for inflation. In the program's later years, the loans were partially, then fully, indexed to the inflation rate as measured by the variation in the nominal value of the Obrigações Reajustáveis do Tesouro Nacional (Readjustable National Treasury Bonds, or ORTN). This type of adjustment for inflation is referred to in Brazil as "monetary correction."

In December 1982, the interest rates on PROALCOOL industrial loans were placed on a par with interest rates on agro-industrial loans given to the processors of agricultural products, as part of the agricultural loan program, with funds provided by the Banco Central do Brasil (BCB). We verified that these agricultural and agro-industrial loans were available to producers of all types of agricultural and agro-industrial products in Brazil. In December 1983, PROALCOOL loans ceased to exist as such, and ethanol producers became eligible for agro-

industrial loans carrying an interest rate of 5 percent, including full monetary correction except for those loans made to borrowers located in certain regions of Brazil (Amazonia, Northeast, State of Espirito Santo, and Vale do Jequitinhonha in the State of Minas Gerais). We verified that none of the companies chosen to respond to our questionnaires are located in any of those areas.

Based on the foregoing, we determine that PROALCOOL loans are provided to a specific enterprise or industry, or group of enterprises or industries. Therefore, PROALCOOL industrial loans granted prior to the merger of the PROALCOOL and agricultural loan systems are countervailable to the extent that they were provided on terms inconsistent with commercial considerations. We also determine that, because agricultural loans are provided to a wide variety of agricultural and agro-industrial products, the agro-industrial loans received by ethanol distillers following the merger of the programs are not countervailable [see, "Final Negative Countervailing Duty Determination; Fresh Cut Flowers from Mexico" (49 FR 15007)].

At the time of our preliminary determination in order to ascertain whether PROALCOOL industrial loans were made on terms inconsistent with commercial considerations, we compared the interest rates on these loans to the interest rates of agro-industrial loans, taking into account the different levels of eligibility available under each program. Based on these comparisons, we found that PROALCOOL loans were given on terms inconsistent with commercial considerations. To measure the benefit, we used an composite benchmark made up of the interest rates on agro-industrial loans and ORTN, as a measure of the rate of inflation.

For the final determination, we have reconsidered the basis for evaluating whether PROALCOOL industrial loans are given on terms inconsistent with commercial considerations and the benchmark for measuring the benefit, if any. We have concluded that our earlier reliance on agro-industrial loans was incorrect.

Of the distillers selected to respond to our questionnaire, none had agro-industrial loans prior to the merger of the PROALCOOL program with the agricultural loan program. Instead, the primary alternative sources of funds for the distillers were loans from the Banco Nacional de Desenvolvimento Econômico e Social (BNDES) and its subsidiary agency, the Agência Especial de Financiamento Industrial (FINAME).

BNDES and FINAME loans have been found not to be countervailable in previous Brazilian countervailing duty investigations because they are provided to a wide range of industries [see, e.g., "Final Affirmative Countervailing Duty Determination; Certain Carbon Steel Products from Brazil" (49 FR 17988)].

Therefore, in accordance with the Subsidies Appendix, we have used company-specific benchmarks or, where the distiller did not take out a BNDES or FINAME loan in the same year as it undertook PROALCOOL loans, the BNDES or FINAME rates incurred by other distillers in that year. On this basis, we determine that PROALCOOL industrial loans were made on terms inconsistent with commercial considerations.

Respondents submitted information that the source of PROALCOOL loans was a World Bank loan to the government of Brazil. Documentation provided during verification shows that, in June 1981, the World Bank agreed to provide a loan to the government of Brazil for the purpose of financing PROALCOOL projects. The loan contract specified that the government of Brazil match the World Bank commitment. Funds provided by the World Bank are not countervailable [see "Initiation of Countervailing Duty Investigation; Certain Textiles and Textile Products from the Philippines" (49 FR 34382)]. Accordingly, for those PROALCOOL loans provided after June 1981, we are countervailing only that portion attributable to the government of Brazil's commitment under the terms of the World Bank contract.

To measure the benefit, we have computed the amount of principal and interest paid on the PROALCOOL loan during the review period and compared it to the amount of principal and interest that would have been paid that year had the financing been in the form of a BNDES or FINAME loan taken out in the same year as the PROALCOOL loan. For years where no BNDES or FINAME loans were taken out by the distillers, we have relied on best information available, derived from World Bank sources, to construct the benchmark. We used this methodology for measuring the benefits from PROALCOOL industrial loans, rather than the long-term loan methodology describe in the Subsidies Appendix, because payments under the benchmark loan are indexed to inflation. Therefore, we cannot calculate the grant equivalent to allocate over the life of the loan.

In addition, in reviewing PROALCOOL loan contracts received

during verification, we found that the proceeds from PROALCOOL loans were applied to purchase machinery and equipment used in the manufacture of refined sugar as well as alcohol.

Therefore, after measuring the benefit from the PROALCOOL industrial loans, using the methodology described above, we allocated the benefit over the distillers' total sales, and calculated a net subsidy of 1.65 percent *ad valorem*.

B. PROALCOOL Agricultural Credits to Distillers

During verification, we found that certain loans to distillers, which the government of Brazil had originally reported as PROALCOOL industrial loans, were actually PROALCOOL agricultural loans. Like PROALCOOL industrial loans, PROALCOOL agricultural loans are long-term loans which are administered by the Banco Central do Brasil (BCB), with commercial, federal, and state banks acting as agents. Certain distillers who are also sugar cane growers received these loans, which were tied to their production of sugar cane.

In December 1980, interest rates and eligibility levels on PROALCOOL agricultural loans were placed on a par with interest rates and eligibility levels on agricultural loans made with funds provided by the BCB. We verified that these agricultural loans were available to producers of all types of agricultural products in Brazil. Moreover, based on statistics provided in the response, sugar cane does not receive a disproportionate share of agricultural credits in Brazil. In December 1983, PROALCOOL loans ceased to exist as such, and sugar cane growers became eligible, as were all other agricultural producers, for agricultural loans carrying an interest rate of 3 percent, including full monetary correction.

Based on the foregoing, we determine that PROALCOOL agricultural loans are provided to a specific enterprise or industry, or group of enterprises or industries, because they are limited to growers of sugar cane for ethanol. Therefore, PROALCOOL agricultural loans given prior to the merger of the PROALCOOL and agricultural loan systems confer a subsidy to the extent that they were given on terms inconsistent with commercial considerations. We also determine that, because agricultural loans are provided to a wide variety of agricultural and agro-industrial products, the agricultural loans received by ethanol distillers for their sugar cane operations following the merger of the programs are not countervailable [see our notice of "Final Negative Countervailing Duty

Determination; Fresh Cut Flowers from Mexico" (49 FR 15007)].

To determine whether PROALCOOL agricultural credits were made on terms inconsistent with commercial considerations, we compared the PROALCOOL interest rate with composite benchmark rates made up of the interest rates on agricultural loans and ORTN. The composite benchmarks were constructed to take into account the different levels of eligibility for PROALCOOL and agricultural loans. Using this benchmark, we find that the PROALCOOL agricultural loans made before December 1980 are inconsistent with commercial considerations, and therefore confer a subsidy. We also find that PROALCOOL agricultural loans made after December 1980 are not inconsistent with commercial considerations. In order to measure the benefit, we applied our long-term loan methodology, using the benchmark interest rate described above as the discount rate. We allocated the benefit over the distillers' total sales during the review period, and calculated a net subsidy of 0.001 percent.

C. FUNPROCUCAR Long-Term Loans

Petitioners allege that certain ethanol distillers have received countervailable financing under the heading of FUNPROCUCAR. According to the government of Brazil, the now-terminated FUNPROCUCAR program was administered jointly by the Banco do Brasil and the Instituto do Açúcar e do Alcool (IAA) throughout the 1970's in order to expand sugar refining capacity. IAA is the government agency which administers sugar and alcohol production and distribution in Brazil.

At verification, we ascertained that certain ethanol distillers had a number of FUNPROCUCAR loans outstanding during the review period. Although FUNPROCUCAR loans were tied to the expansion of production facilities for refined sugar, a product which is neither under investigation nor used as an input for the product under investigation, the machinery which was purchased with these loans can also be used in the production of fuel ethanol.

Because these loans were limited to a specific industry, the sugar refining industry, they are countervailable to the extent that they were provided on terms inconsistent with commercial considerations. To determine whether these loans were made on terms inconsistent with commercial considerations, we compared the interest rate with the following benchmarks.

For loans given in 1977, we used the same benchmark as for PROALCOOL

industrial loans, *i.e.*, the BNDES/FINAME interest rate as derived from World Bank sources. For those loans given in 1975 and 1976, we used best information available. According to the World Bank, BNDES/FINAME applied a monetary correction cap of 20 percent in 1975 and 1976. We had no information on the average real interest charged. Therefore, we used the 1977 real interest rate and the partial monetary correction to construct our benchmark. We had no benchmark information for loans given in 1973 or 1974. Monetary correction was not applied until 1975. Therefore, we used the 1977 real interest rate as the best information available to calculate the interest differential.

Using these benchmarks, we find that the terms of FUNPROCUCAR loans were inconsistent with commercial considerations. In order to measure the benefit, we applied our long-term loan methodology. We allocated the benefit over the distillers' total sales during the review period, and calculated a net subsidy of 0.05 percent *ad valorem*.

D. IAA Financing

Petitioner's allege that the ethanol industry in Brazil has received financing on terms inconsistent with commercial considerations from the IAA. In its response, the government of Brazil stated that the Cooperativa Central dos Produtores de Açúcar e Alcool do Estado de São Paulo (COPERSUCAR) had received a loan from IAA. COPERSUCAR is the cooperative to which all but one of the distillers from whom we requested responses belong.

During verification, we ascertained that COPERSUCAR was the only respondent that had received any financing from IAA.

Because the IAA loan to COPERSUCAR was limited to a specific enterprise, a cooperative of ethanol distillers and sugar producers, we find the loan to be countervailable to the extent that it was provided on terms inconsistent with commercial considerations. To determine whether this loan was made on terms inconsistent with commercial considerations, we compared the terms of the IAA loan with the terms on FINAME loans taken out by distillers in the same year. Using this benchmark, we find that the terms of the IAA loan are inconsistent with commercial considerations.

In addition, in response to a specific allegation by petitioners, we analyzed the creditworthiness of COPERSUCAR. As a cooperative, COPERSUCAR operates only as an administrative, marketing, and selling arm for its

members, and is a non-profit organization. Therefore, COPERSUCAR's ability to repay the loan depends on the creditworthiness of its member companies, and we must examine the financial position of its members in order to determine whether COPERSUCAR itself is creditworthy. Based on our review of the financial ratios for the period 1978 through 1981 of the cooperative members chosen to respond to our questionnaires, we find these members, in aggregate, to be creditworthy in 1981, the year in which COPERSUCAR received the loan.

In order to measure the benefit, we applied our long-term loan methodology for loans to creditworthy companies. We allocated the benefit over COPERSUCAR's sales during the review period, and calculated a net subsidy of 0.12 percent *ad valorem*.

E. Income Tax Exemption for Export Earnings

Under Decree-Laws 1158 and 1721, exporters of fuel ethanol are eligible for an exemption from income tax on profits attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, we determine that this exemption confers an export subsidy.

None of the trading company respondents claimed this exemption during the review period. However, several of the respondent distillers took an exemption from income tax payable in 1984 on export profits earned in 1983. We indexed the exempted profit, as required under Brazilian tax law, and multiplied it by each company's effective corporate tax rate to measure the benefit. We determined each company's effective corporate tax rate by taking the base tax liability and adding, where applicable, the standard surcharge for excess profits, and subtracting normal deductions such as the investment tax credit and the tax for the Programa de Integração Social (PIS) tax, which were taken by the respondents, and dividing the result by taxable income.

In certain past cases, we have refused to accept the investment tax credits in calculating an effective tax rate because, absent a showing of a reasonable expectation of returns from these investments, we considered them to be merely a way of targeting a company's taxes. However, in this proceeding, we verified that respondents received shares in certain investment funds and companies. Therefore, we have deducted the investment credits in calculating each company's effective tax rate.

As described above, we measured the benefit by multiplying the indexed value of the exemption by each company's effective tax rate and dividing the amount by the value of the distillers' exports. On this basis, we calculated a net subsidy 0.78 percent *ad valorem*.

II. Upstream Subsidies

Petitioners alleged that Brazilian fuel ethanol producers receive an "upstream subsidy" through the purchase of subsidized sugar cane inputs. Under section 771A(a) of the Act, we must apply the following tests in order to determine whether "upstream subsidies" are being paid or bestowed upon the product under investigation:

The term "upstream subsidy" means any subsidy described in section 771(5)(B)(i), (ii), or (iii) by the government of a country that—

- (1) is paid or bestowed by that government with respect to a product (hereafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;
- (2) in the judgment of the administering authority, bestows a competitive benefit on the merchandise; and
- (3) has a significant effect on the cost of manufacturing or producing the merchandise.

Domestic Subsidy: PROALCOOL Agricultural Loans

Petitioners allege that sugar cane growers in Brazil have benefitted from long-term financing on terms inconsistent with commercial considerations under the PROALCOOL agricultural credit program. In response, the government of Brazil stated that certain sugar cane growers had received long-term agricultural credits from PROALCOOL. These credits were administered by the BCB, with commercial, federal, and state banks acting as agents.

In December 1980, interest rates and eligibility levels on PROALCOOL agricultural loans were placed on a par with interest rates and eligibility levels on agricultural loans made with funds provided by the BCB. We verified that these agricultural loans were available to producers of all types of agricultural products in Brazil. Moreover, based on statistics provided in the response, sugar cane does not receive a disproportionate share of agricultural credits in Brazil. In December 1983, PROALCOOL loans ceased to exist as such, and sugar cane growers became eligible, as were all other agricultural producers, for agricultural loans carrying an interest rate of 3 percent, including full monetary correction.

Based on the foregoing, we determine that PROALCOOL agricultural loans are provided to a specific enterprise or

industry, or group of enterprises or industries, because they are limited to growers of sugar cane for ethanol. Therefore, PROALCOOL agricultural loans given prior to the merger of the PROALCOOL and agricultural loan systems confer a subsidy to the extent that they were given on terms inconsistent with commercial considerations. We also determine that, because agricultural loans are provided to a wide variety of agricultural and agro-industrial products, the agricultural loans received by sugar cane producers following the merger of the programs are not countervailable [see, "Final Negative Countervailing Duty Determination; Fresh Cut Flowers from Mexico" (49 FR 15007)].

To determine whether PROALCOOL agricultural credits were made on terms inconsistent with commercial considerations, we compared the PROALCOOL interest rates with composite benchmark rates made up of the interest rates on agricultural loans and ORTN. The composite benchmarks take into account the different levels of eligibility for PROALCOOL and agricultural loans. Using this benchmark, we found that the terms of the PROALCOOL agricultural loans made before 1980 are inconsistent with commercial considerations, and therefore confer a subsidy. To determine the benefit, we applied our long-term loan methodology. We allocated the benefit over total sales of sugar cane during the review period, and calculated a net subsidy of 0.03 percent, which is *de minimis*.

We examined several other domestic programs which were available to sugar cane suppliers:

- PLANALSUCAR Research and Development Program
- Regional Research and Development Programs
- Plantation Roads
- SUDENE

The first of these programs is determined not to confer a subsidy, and is discussed below in "Programs Determined Not to Confer a Subsidy;" the others are discussed in "Programs Determined Not to Be Used."

Because the subsidy to upstream suppliers of sugar cane is *de minimis*, the issues of whether (1) this subsidy has a significant effect on the cost of producing fuel ethanol, and (2) the subsidy confers a competitive benefit on fuel ethanol from Brazil are moot. Accordingly, we determine that no upstream subsidies are being paid or bestowed on fuel ethanol.

III. Programs Determined Not To Confer a Subsidy

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Brazil of fuel ethanol under the following programs.

A. Research and Development Assistance

Petitioners allege that, under the aegis of PROALCOOL and the Programa Nacional de Melhoramento da Cana-de-Açúcar (PLANALSUCAR), the government of Brazil provides research and development assistance aimed primarily at increasing the saccharose content of sugar cane, developing higher-yield and disease-resistant strains of sugar cane, and increasing the productivity of Brazilian distillers.

During verification, we ascertained that research and development assistance is not restricted to the sugar cane and ethanol industries, but is available to all sectors of Brazilian agriculture. In addition, all research papers generated under the PROALCOOL and PLANALSUCAR programs are published and made available to all interested persons, not only in Brazil but also in other countries, including the United States. Therefore, we determine that this program does not confer a subsidy.

B. Government Equity Infusions and Capital Assistance to Distillers

Petitioners allege that BNDES-Participações S.A. (BNDESPAR), a holding company subsidiary of BNDES, and its predecessor Investimentos Brasileiros S.A. (IBRASA) have provided equity capital, purchased debentures, and guaranteed securities to promote the capitalization of the Brazilian fuel ethanol industry, and that such equity investments were made on terms inconsistent with commercial considerations.

In its response, the government of Brazil stated that since 1981 IBRASA/BNDESPAR has held a small equity position (less than five percent of the stock) in an ethanol distiller (Usina Costa Pinto S.A.) as a result of a public stock offering. Subsequent to the response, petitioners alleged that Usina Costa Pinto was on the verge of bankruptcy at the time of the public stock offering, and, therefore, the investment was on terms inconsistent with commercial considerations.

During verification, we found that IBRASA/BNDESPAR acquired a very small equity position in Usina Costa Pinto on the same terms and conditions as equity investments by private commercial banks. We also ascertained

that another company, Costa Pinto Industria e Comércio Ltda. (CPIC), unrelated to Usina Costa Pinto, had indeed undergone a bankruptcy proceeding in 1981. CPIC is related to Sociedade Anônima Costa Pinto Exportação (CPEI), a trading company which exported fuel ethanol to the United States during the review period. We verified that CPEI had no government equity participation.

Because the IBRASA/BNDESPAR purchase of equity in Usina Costa Pinto was made on the same terms as purchases by private commercial banks, we find that that IBRASA/BNDESPAR's equity participation does not confer a subsidy.

C. Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERNO

Petitioners allege that the ethanol-related activities of the predominantly state-owned energy conglomerate Petroleos do Brasil S.A. (PETROBRAS) are unprofitable, and that the government of Brazil's debt and equity infusions in PETROBRAS are enabling the conglomerate to continue its support of the Brazilian ethanol industry. Therefore, petitioners claim that the loans and equity infusions were on terms inconsistent with commercial considerations. In a later submission, petitioners alleged that PETROBRAS users retained earnings from its profitable petroleum and petrochemical activities, to make equity infusions into INTERBRAS, a trading company which is a separately incorporated, wholly-owned subsidiary of PETROBRAS. Petitioners claim that such equity infusions are made on terms inconsistent with commercial considerations, and that they are used by INTERBRAS to cover the operating losses it experiences on its export sales of ethanol. Finally, petitioners allege that INTERBRAS made equity infusions into INTERNO, its wholly-owned trading arm in the United States, and that these infusions were made on terms inconsistent with commercial considerations.

Based on our investigation, we have learned that PETROBRAS is an energy conglomerate in which the government of Brazil holds 51 percent of the equity. PETROBRAS does not produce ethanol. Instead, it purchases domestically produced ethanol and sells it to distributors and retailers in Brazil. PETROBRAS is not directly involved in fuel ethanol sales to the United States. INTERBRAS, its wholly-owned subsidiary, exports fuel ethanol as well as other non-fuel products. INTERBRAS does not sell ethanol in the domestic

Brazilian market. INTERBRAS, in turn, owns a number of subsidiaries in various countries which act as selling arms for its export activities. INTERNOR is INTERBRAS' selling arm in the United States.

We have also learned that PETROBRAS has received no equity infusions from the government since 1976, which is the first year for which we asked for information. Furthermore, the government has not converted any debt to equity from 1976 through 1984. With respect to debt, PETROBRAS had two FINEP (Financiadora de Estudos e Projetos) loans and two PROALCOOL loans outstanding during the review period. The two FINEP loans are tied to products other than ethanol. The PROALCOOL loans were used to build storage tanks for ethanol.

Neither INTERBRAS nor INTERNOR has received direct government debt or equity infusions. However, PETROBRAS made equity infusions into INTERBRAS during 1976-1984 and, in 1983 and 1984, INTERBRAS converted some of INTERNOR's debt to equity.

In examining whether these equity infusions into INTERBRAS and INTERNOR confer a subsidy, petitioners contend that we must focus not on the overall equityworthiness of these firms, but rather on the profitability of the specific product line under investigation. In this way, they argue, subsidies cannot be removed from the scope of the countervailing duty law merely because profitable product lines are used to subsidize unprofitable product lines. Petitioners note that the concept and countervailability of "cross-product subsidization" was recognized by the Department in the countervailing duty investigation of *Nitrocellulose from France*, 48 FR 11971 (1983).

We determine that although PETROBRAS did have two preferential PROALCOOL loans, thus creating a subsidized pool of funds which could potentially be transmitted to INTERBRAS/INTERNOR via equity infusions, these infusions were not made on terms inconsistent with commercial considerations, and are therefore not countervailable. Because we have determined that PETROBRAS' equity infusions into INTERBRAS/INTERNOR were made on terms not inconsistent with commercial considerations, we do not have to reach the issue of whether PETROBRAS' profits constitute a potential source of subsidy funds for the activities of INTERBRAS/INTERNOR.

We determine further that the equity infusions by INTERBRAS into INTERNOR should be viewed as intra-company transfers of funds, and

therefore not countervailable, because INTERNOR is merely the selling arm of INTERBRAS in the United States, and its activities are expressly stated to be an extension of its parent's.

Although they are separately incorporated entities, INTERBRAS treats the profits and losses from INTERNOR and its other sales subsidiaries as line items in its income statement. In addition, in an annual note to its financial statements, INTERBRAS states that its sales subsidiaries are merely extensions of its own activities. Therefore, we have examined only the equity infusions from PETROBRAS to INTERBRAS/INTERNOR. We have examined INTERBRAS/INTERNOR's financial ratios and find it to be equitable.

We reaffirm our normal practice of examining a company's overall equityworthiness when making a determination of whether infusions were made on terms inconsistent with commercial considerations. We have long held that the benefit from an equity infusion benefits all operations of a company. The Court has upheld this practice in *British Steel Corp. v. United States* (Slip Op. 85-26, March 6, 1985, p. 20):

[T]he Court agrees with the defendants' contention that since equity investments in BSC benefitted all of its remaining manufacturing and exporting operation, it is unnecessary to trace the use of such funds or to find that they directly related to enhanced product competitiveness.

We disagree with petitioners' contention that we should focus on the profitability of INTERBRAS' ethanol activities in relation to its profitability on its other product lines in determining whether an equity investment is consistent with commercial practice. It is normal commercial practice for a firm engaged in a number of product lines to expect differing rates of return on each product line. Each product line must be sufficiently profitable over the long term to justify the commitment of resources by the company. However, simply because one product line has a lower rate of return than another does not indicate that a firm is behaving in a non-commercial manner. Were we to accept petitioners' rationale, any product line which achieved less than the average rate of return for the company as a whole would be considered as benefiting from the more profitable product lines. This leads to the absurd result that half of a company's activities are potentially subsidized.

Even if we had accepted petitioners' argument our determination that no subsidy was provided would not have

changed. We verified that INTERBRAS/INTERNOR ethanol-related activities were not unprofitable during the period of investigation. Therefore, we determine that there were no subsidized equity infusions.

D. PETROBRAS Storage Assistance -

Petitioners allege that PETROBRAS has provided storage facilities to Brazilian distillers and cooperatives at non-commercial rates. In addition, petitioners allege that PETROBRAS made available to fuel ethanol exporters its pipeline from Sao Paulo to the port of Santos.

During verification, we ascertained that the rates fuel ethanol distillers pay PETROBRAS for the use of its storage facilities are identical to those they charge PETROBRAS for the same service. In addition, we found no evidence that PETROBRAS built storage tanks for use by the distillers, or that it provided the distillers with free use of its storage facilities. We also verified that PETROBRAS charged for the use of its pipeline to transport fuel ethanol. Therefore, we determine PETROBRAS storage assistance does not confer a subsidy.

E. PETROBRAS Payment Terms

Petitioners allege that ethanol distillers in Brazil receive two types of benefits by virtue of the payment terms for ethanol sales to PETROBRAS. First, payment is received by distillers within 15 days of invoicing. Petitioners contend that if the standard commercial payment terms in Brazil exceed 15 days, then PETROBRAS' "early" payment terms constitute a subsidy. Second, PETROBRAS takes delivery of ethanol over a twelve-month period but makes payments over a nine-month period, resulting in prepayment. Petitioners argue that such prepayment is unlikely to be consistent with standard commercial practice and, therefore, constitutes a subsidy.

All anhydrous fuel ethanol produced for the domestic market must be sold to PETROBRAS. Under IAA rules, PETROBRAS takes delivery of one-twelfth of each distiller's quota every month. Invoices are issued over a nine-month period, and payment is made by PETROBRAS within two weeks after invoicing. These payment terms are established by legislation.

Based on information gathered at verification, we determine that 15-day payment terms are not an unusual practice in Brazil. Terms normally range from payment on sight to 180 days. Therefore, we determine that PETROBRAS' 15-day payment terms do not confer a subsidy.

With regard to prepayment, we have concluded that the payment and delivery scheme reflects the agricultural commodity nature of this product. The harvest and production cycles are not continuous, yet the product is consumed year round. Thus, the delay in deliveries is the result of the necessary stockpiling and withdrawal for consumption during the period when ethanol is not produced. Therefore, we determine that this payment and delivery scheme can be considered normal commercial practice for agricultural commodities, and, as such, does not constitute a subsidy.

IV. Programs Determined Not To Be Used

We determine that manufacturers, producers or exporters of fuel ethanol in Brazil did not use the following programs which were listed in our notice of "Initiation of a Countervailing Duty Investigation; Fuel Ethanol from Brazil" (50 FR 11526).

A Regional Development Programs

Petitioners allege that ethanol distillers in the Northeast of Brazil are subsidized under the following federal and state programs.

1. *Cost Equalization Programs.* Petitioners allege that under this program, the IAA makes cash payments to fuel ethanol producers located in the states of Alagoas, Espirito Santo, Minas Gerais, Paraiba, Pernambuco, Rio de Janeiro, and others.

2. *SUDENE.* Petitioners allege that a government agency known as the Superintendência do Desenvolvimento do Nordeste (SUDENE) extends tax credits, exemptions, and other benefits to companies operating or investing in the Northeast of Brazil.

We verified that none of the companies from which we requested responses are located in any of the regions eligible for special assistance.

B. IAA and Other Government Loan Guarantees

Petitioners allege that the IAA and other Brazilian government agencies have guaranteed loans taken out by certain fuel ethanol producers and cooperatives.

We verified that none of the companies from which we requested responses had received loan guarantees from the IAA or any other government agency.

C. Restructured IAA Loans

Petitioners allege that certain loans taken out by ethanol distillers and

cooperatives have been restructured with IAA assistance.

During verification, we ascertained that one of the respondents, Companhia Industrial e Agricola Sao Joao ("Sao Joao"), had its foreign-currency debt restructured and converted into cruzeiro-denominated debt in 1984. We verified that neither IAA nor any other agency of the government of Brazil was involved in this debt restructuring, and that it did not take place at the behest of the government of Brazil. Rather, the restructuring was carried out by Sao Joao's private creditors. Therefore, we determine this program was not used.

D. Accelerated Depreciation for Brazilian-Made Capital Equipment

Petitioners allege that, pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws.

At verification, we ascertained that none of the respondents had used this tax provision during the review period.

E. Preferential Working-Capital Financing for Exports

Petitioners allege that producers and exporters of fuel ethanol have received preferential export financing from the Carteira do Comércio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil, which administers a program of short-term working-capital financing. During the review period, these working-capital loans were provided under Resolution 882 of the Banco Central do Brasil. On August 21, 1984, Resolution 882 was superseded by Resolution 950.

During verification, we ascertained that exports of fuel ethanol are not eligible for this type of financing.

F. Export Financing Under the CIC-CREGE 14-11 Circular

Petitioners allege that producers and exporters of fuel ethanol may have obtained preferential export financing under the Banco do Brasil's CIC-CREGE 14-11 circular.

During verification, we ascertained that none of the respondents had any such loans outstanding during the review period.

G. FINEX Export Financing

Petitioners allege that producers and exporters of fuel ethanol, as well as importers of fuel ethanol from Brazil in the United States, may have received preferential export financing under

Resolution 68 of the Conselho Nacional do Comércio Exterior (CONCEX).

During verification, we ascertained that fuel ethanol is not eligible for FINEX financing.

H. Resolution 330 of the Banco Central do Brasil

Petitioners allege that producers and exporters of fuel ethanol may have benefited from Resolution 330 of the Banco Central do Brasil, which provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export.

During verification, we ascertained that none of the respondents participated in this program during the review period.

I. Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI)

Petitioners allege that producers and exporters of fuel ethanol may have participated in the CDI program, under which companies may receive an exemption of 80 to 100 percent of customs duties and IPI tax on certain imported machinery. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

During verification, we ascertained that none of the respondents were eligible to participate in this program during the review period.

J. The BEFLEX Program

Petitioners allege that exporters of fuel ethanol may have received benefits from the Comissao para a Concessao de Beneficios Fiscais a Programas Especiais de Exportacao (Commission for the Granting of Fiscal Benefits to Special Export Programs, or BEFLEX), which grants certain tax benefits to Brazilian exporters.

During verification, we ascertained that none of the respondents participated in this program during the review period.

K. The CIEX Program

Petitioners allege that exporters of fuel ethanol may have received tax benefits from the Comissao para Incentivos à Exportacao (Commission for Export Incentives, or CIEX) under Decree-Law 1428.

During verification, we ascertained that none of the respondents participated in this program during the review period.

L. Incentives for Trading Companies

Petitioners allege that, under Resolution 883 of the Banco Central do Brasil, trading companies may obtain export financing similar to that obtained by manufacturers under Resolution 882 and 950.

During verification, we ascertained that none of the respondents participated in this program during the review period.

M. The PROEX Program

Petitioners allege that exporters of fuel ethanol may have benefited from short-term export credits under the Programa do Financiamento à Produção par a Exportação (PROEX), previously referred to as the Apóio à Exportação program.

During verification, we ascertained that none of the respondents participated in this program during the review period.

N. Plantation Roads

Petitioners allege that sugar cane growers in the Northeast of Brazil have benefited from plantation roads built at government expense for their exclusive use.

During verification, we ascertained that none of the respondents are located in the Northeast of Brazil. Therefore, we determine this program was not used.

O. Regional Research and Development Programs

Petitioners allege that ethanol distillers and sugar cane growers located in the northeastern Brazilian states of Alagoas and Pernambuco have benefited from certain state-run research and development programs.

During verification, we ascertained that none of the respondents are located in the states of Alagoas and Pernambuco. Therefore, we determine that these programs were not used.

V. Program Determined to Have Been Terminated

IPI Export Credit Premium

Until recently, Brazilian exporters of manufactured products were eligible for a tax credit on the Imposto sobre Produtos Industrializados (Tax on Industrialized Products, or IPI). The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable industrial products, was found to confer a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the

government of Brazil reinstated it on April 1, 1981.

Subsequent to April 1, 1981, the credit premium was gradually phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). Under the terms of Ministry of Finance "Portaria" (Notice) No. 176 of September 12, 1984, the credit premium was eliminated effective May 1, 1985. We verified that no producers or exporters of fuel ethanol received the IPI export credit premium after that date.

Accordingly, consistent with our stated policy of taking into account program-wide changes that occur subsequent to the review period but prior to our preliminary determination, we determine that this program has been terminated, and no benefits under the program are accruing to current exports of fuel ethanol to the United States.

Petitioners' Comments

Comment 1: Petitioners argue that the Department's failure to obtain subsidy data on all ethanol producers and exporters from the government of Brazil, and to base its sample solely on export volumes, skewed the subsidy findings and ignored a number of critical variables such as the creditworthiness of the distiller and/or cooperative; the nature of ownership (public or private); the location of production facilities; and the relationship between the distiller and grower (autonomous versus annexed). All these variables should have been measured and analyzed in order to determine the true level of subsidization occurring in the Brazilian fuel ethanol industry.

DOC Position: In light of the number of companies involved, the complexity of issues, and the multiplicity of government agencies administering the programs, obtaining global subsidy information from the government of Brazil and investigating 100 percent of the producers and exporters of fuel ethanol would be an administratively impossible task. Moreover, this is not required by law. Thus, we followed our well-established practice of obtaining information from producers who account for at least 60 percent of the dollar volume of exports to the United States of the merchandise in question. See, e.g., *Bars and Shapes from Mexico* [49 FR 32887 (1984)]; *Oil Country Tubular Goods from Mexico* [49 FR 47054 (1984)]; and *Certain Textile Mill Products and Apparel from Malaysia* [50 FR 9852 (1985)].

We do not agree with petitioners' contention that our methodology has skewed the subsidy findings or ignored critical variables. We believe the selection method utilized, and the investigation conducted pursuant thereto, provides an accurate representation of the industry. For further discussion of our methodology in selecting companies to receive detailed questionnaires and our investigation of only those companies that account for 60 percent of exports to the United States of the subject merchandise, see *Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852).

Comment 2: Petitioners contend that the Department must base its countervailing duty deposit rate on a nationwide average level of subsidization (i.e., all distillers capable of producing the product under investigation), due to the extensive control the government of Brazil maintains over the industry. It is argued that this information is relevant in order to capture subsidies to entities not currently exporting to the United States which might, however, do so in the future, and because the government of Brazil's role in ethanol production makes the distinction between exporters and domestic producers meaningless and artificial. Petitioners cite *Float Glass from Italy* as a precedent wherein the Department, in order to ensure that any potential subsidy was captured, examined both the region where the product was manufactured and the region from which the product was ultimately exported in considering whether regional subsidies were bestowed.

DOC Position: Countervailing duties are levied to neutralize the effects of benefits given to merchandise which is exported to the United States. Therefore, the law does not encompass entities which do not export to the United States. Whether or not the government of Brazil's "control" over the ethanol industry will affect Brazilian domestic entities' business decisions to export to the United States in the future is an issue inappropriate to this investigation. Changes in the make-up of the industry and the level of subsidization will be determined in any future administrative review. Our determination in *Float Glass from Italy* is inapposite to this investigation. That investigation involved examining a potential regional subsidy received by one of the plants of the company which manufactured the product under investigation. It does not stand for the proposition that the Department must examine every company in every region in order to determine whether a subsidy is being

provided with respect to the merchandise under investigation. See also response to petitioners' Comment 1.

Comment 3: Petitioners contend that while autonomous distillers receive greater PROALCOOL loan benefits than annexed distillers, the distillers selected to respond to the Department's questionnaire are all annexed to sugar-making facilities, thereby minimizing, by definition, the amount of subsidy resulting from the limited inquiry.

DOC Position: We disagree. According to verified information on the record, both autonomous and annexed distillers pay the same interest rates on PROALCOOL loans. Therefore, we have no reason to believe that the absence of autonomous distillers from our pool of respondents has resulted in any underestimation of the level of benefits.

Comment 4: Petitioners argue that the issue of regional subsidies was "side-stepped" by the Department since all the distillers selected to respond are located in one state, where regional subsidies apparently do not exist.

DOC Position: The issue of regional subsidization was not side-stepped by the Department. The Department did not select distillers by region, but by the dollar volume of their exports to the United States. That all of the distillers selected are located in a single state, where regional subsidies do not exist, merely demonstrates that the companies comprising over 60 percent of exports of fuel ethanol to the United States do not use regional subsidies. Furthermore, the 60 percent methodology does not misrepresent the estimated net subsidy. See also response to petitioners' Comment 1.

Comment 5: Petitioners contend that since the Brazilian ethanol industry is not autonomous from the government and the industry and the government are by and large inseparable, the Department's standard sampling techniques fall far short of defining the totality of government subsidization.

DOC Position: While the government of Brazil controls prices and implements production quotas on ethanol in Brazil, we do not find that the industry is inseparable from the government. The distillers and cooperatives are privately owned, keep their own accounts, and are responsible to their shareholders for all business decisions. The methodology utilized by the Department does not, under these circumstances, fail to define the totality of government subsidization.

Comment 6: Petitioners contend that most participants in the Brazilian fuel ethanol industry (including COPERSUCAR, Sao Joao and Usina Costa Pinto) should be considered

uncreditworthy from 1981 onward since, in the absence of debt back-ups and guarantees by the government of Brazil, these companies would not have received any loans.

DOC Position: We verified that none of the respondents received loan guarantees from the IAA or any other agency of the government of Brazil. Accordingly, this issue does not need to be addressed.

Comment 7: Petitioners contend that, for creditworthy companies, government-guaranteed debt constitutes a subsidy because the mere presence of the government guarantee ensures a lower rate of interest.

DOC Position: See answer to petitioners' Comment 6.

Comment 8: Petitioners argue that the Department should use a comparison of real interest rates in order to measure the subsidy value of cruzeiro-based replacement loans for those respondents with dollar-denominated debt in default.

DOC Position: We verified that Sao Joao's reorganization of its dollar-denominated debt was carried out by its private creditors without government direction, and that COPERSUCAR never had dollar-denominated debt at all. Accordingly, this issue need not be addressed.

Comment 9: Petitioners argue that the government of Brazil's contention that the portion of PROALCOOL credits originating from the World Bank should not be countervailed is irrelevant, since (i) this assertion of World Bank financing is undocumented, and (ii) it is the government of Brazil which targets the recipients and uses of PROALCOOL funds.

DOC Position: We disagree. As explained above in the section on "PROALCOOL Industrial Credits to Distillers," a copy of the contract between the World Bank and the government of Brazil has been entered on the record. We verified that the contract itself specifies that the World Bank funds are to be applied to finance PROALCOOL projects.

Comment 10: Petitioners argue that the Department must use a commercial benchmark, *i.e.*, the charges that would be paid to a commercial lender, in measuring the benefits conferred by government-sourced debt. Therefore, every loan from a government source, obtained with a government guarantee or directed by the government must be examined. The Department's analysis in the preliminary determination was inappropriate because it compared subsidized debt to other government-based debt. In hyper-inflationary countries such as Brazil, commercial lenders are unwilling to provide long-

term financing. Therefore, the appropriate benchmark is the short-term, commercial interest rate. Moreover, the benchmark rate should include compensating balances, because such balances are normally required for short-term, commercial loans and because the Department's benchmark in the recent ruling on *Certain Agricultural Tillage Tools from Brazil* included compensating balances. Finally, if the recipient of the loan is uncreditworthy, an additional risk premium must be included in the benchmark.

DOC Position: In countries where long-term financing or the terms of long-term financing are controlled by the government, it has been the Department's practice to use government-sourced or directed loans as benchmarks when those loans are provided to more than a specific industry or group of industries (see, *e.g.*, *Cold-Rolled Carbon Steel Flat-Rolled Products from Korea*, 49 F.R. 47284, and *Certain Textile Mill Products and Apparel from Colombia*, 50 F.R. 9863). In our view, this benchmark is the best measure of the benefit to the recipient of the subsidized loan because it reflects what the recipient would otherwise have paid for a comparable loan.

The short-term benchmark proposed by petitioners, a trade bill discount rate, cannot be considered comparable to long-term financing for investment. Even where the Department has used the short-term commercial rate in Brazil as a benchmark, most often for short-term export financing, we do not generally include compensating balances. This is because we have found that there is no uniform requirement for such balances (see, *e.g.*, *Oil Country Tubular Goods from Brazil*, 49 F.R. 46570). Compensating balances have been included in benchmarks for uncreditworthy companies, as was the case in *Certain Agricultural Tillage Tools*, where we used that benchmark as best information available. In this investigation we have found no loans to uncreditworthy companies and, therefore, there is no need for such a benchmark.

Comment 11: Petitioners contend the cruzeiro-based bail-out of loans received by COPERSUCAR, Sao Joao, and Usina Costa Pinto in 1981 and 1984 should not be compared to other subsidized, cruzeiro-based agricultural loans. The subsidy value of the replacement loans should instead be compared to a benchmark reflecting the cost of dollar-denominated debt to uncreditworthy companies in Brazil. Moreover, this benchmark should be the highest rate associated with dollar-

denominated long-term debt in Brazil, should include dollar-based risk premiums, and should reflect any additional subsidy due to the relaxation of the repayment schedules.

DOC Position: As discussed above, we found no evidence that cruzeiro-based loans replaced dollar-denominated loans for COPERSUCAR or Usina Costa Pinto. For Sao Joao the refinancing of dollar-denominated debt was carried out between Sao Joao and private commercial banks without government direction. Therefore, the correct benchmark for refinancing of dollar-denominated debt need not be addressed.

Comment 12: Petitioners contend that the department's use of a general agricultural financing benchmark to measure the benefits received through PROALCOOL industrial credits undervalued the subsidy, since general agricultural financing is itself highly subsidized. According to a Banco de Boston newsletter, commercial banks are required to set aside a portion of their reserves for loans to the agricultural sector and the Department has found export financing from similar "set-aside" programs to be countervailable in *Prestressed Concrete Steel Wire Strand from Spain*.

DOC Position: For reasons discussed above, we have not used agricultural loan terms or commercial short-term loan rates proposed by petitioners as the benchmark for PROALCOOL industrial financing to distillers. This is not, however, because of the alleged set-aside characteristic of the agricultural loan program but because we have used company-specific benchmarks. Moreover, with respect to the Spanish export loans, we found that the interest rates on those loans were preferential. While the lower rates may have resulted from the set-aside requirements, we countervailed the result of the program, not the set-aside characteristic *per se*.

Comment 13: Petitioners argue that agricultural loans are not an appropriate benchmark for PROALCOOL loans because it has not been demonstrated that agricultural loans are generally available. Based on information they have provided, petitioners claim that agricultural financing is scarce and that it is allocated disproportionately to certain crops, including sugar cane. Moreover, the information submitted by respondents to demonstrate the general availability of agricultural financing shows only how the supply is allocated without any analysis of the relative demand. Unless agricultural entities have equal access to the available credit, petitioners contend that

agricultural financing cannot be considered generally available.

DOC Position: We have reviewed the information supplied by petitioners and respondents regarding the availability of agricultural loans and have reaffirmed our preliminary finding that agricultural credits are not provided to a specific enterprise or industry, or group of enterprises or industries. In reaching this conclusion, we have considered information from the World Bank report, cited by petitioners, which indicates that, in terms of credit extended as a percentage of value of production, sugar cane does not receive a disproportionate share of agricultural funds. In addition, published statistics filed with one of the responses indicate that sugar cane did not receive a disproportionate share of agricultural funds. The World Bank report also offers explanations of why the demand for credit would vary among types of crops. Regarding the information submitted by petitioners on the recent shortage of agricultural loans, there is no indication that particular segments of the agricultural sector have suffered more than others. Hence, while demand may exceed supply, the alleged shortage of agricultural credit does not appear to affect certain crops disproportionately. Finally, the information submitted by respondents on the distribution of agricultural loans is more contemporaneous with the period during which PROALCOOL loans were given and, thus, is a more relevant measure of their availability.

Comment 14: Petitioners further contend that the Department should not use agricultural financing as a benchmark for PROALCOOL loans to sugar cane growers, because agricultural loans are highly subsidized. Instead, the Department should use a commercial interest rate in the range of ORTN plus 24 to 32 percent. Where appropriate, the benchmark should include a risk premium for uncreditworthy companies.

DOC Position: We disagree. We have chosen agricultural loans as the benchmark for PROALCOOL agricultural loans to sugar cane growers because they represent the major alternative source of financing to the growers, and because we have found them not to be limited to a specific enterprise or industry, or groups of enterprises or industries. We have not analyzed the creditworthiness of these companies because petitioners did not present any specific allegations that these companies were uncreditworthy.

Comment 15: Petitioners argue that the Department should use fixed interest rates in calculating PROALCOOL agricultural loan benefits, based on information received at verification.

DOC Position: The agricultural loans used as the basis for the PROALCOOL agricultural loan benchmarks were offered at fixed interest rates. Therefore, we are using a fixed interest rate benchmark.

Comment 16: Petitioners argue that the Department should rely on their estimates that one-half of the 1983-1984 sugar cane crop was used to produce ethanol and reduce by 50 percent the reported sales value of sugar cane in its calculation of the *ad valorem* benefit from agricultural subsidies on sugar cane.

DOC Position: Although PROALCOOL loans are used to finance the production of sugar cane for use in ethanol production, eligibility for these loans is not contingent upon the specific quantity of sugar cane earmarked for ethanol production. Moreover, even if we accepted petitioners' allegation, the upstream subsidy would still be *de minimis*.

Comment 17: Petitioners contend the Department should examine the discrepancy between the total debt figures in the balance sheet and loan ledger of Agropecuaria Monte Sereno S.A. ("Monte Sereno"), one of the sugar cane growers we investigated, to ensure that no additional loans were outstanding during the period of investigation.

DOC Position: As stated in the verification report on sugar cane growers, Monte Sereno's loan ledger, unlike the audited balance sheet, includes as yet unreleased parcels of long-term loans, which are posted in a separate account. The company's auditors removed these amounts from the balance sheet because they had not yet been received. After deducting these amounts from the outstanding loan balance according to the ledger, the Department investigator was able to reconcile it with the outstanding loan balance according to the balance sheet. Having done this, we are satisfied that no unreported parcels of long-term loans were disbursed during the review period.

Comment 18: Petitioners contend that, since the Department was unable to verify payment of principal and interest on non-PROALCOOL loans by Companhia Agricola Sertaozinho ("Sertaozinho"), one of the sugar cane growers under investigation, we should consider these loans as PROALCOOL agricultural loans and calculate the appropriate subsidy amount.

DOC Position: Documentation shows that Sertaozinho made principal and interest payments on its non-PROALCOOL loans.

Comment 19: Petitioners contend that in calculating benefits under the income tax exemption for export earnings program, the Department erred in reducing the effective corporate income tax rate from 35 percent to 26 percent, since there is no evidence that taxes earmarked for the development funds have actually yielded returns.

Petitioners further contend there is no basis for a reduction in the calculated tax rate equal to the total amount of the investment because respondents have not demonstrated that they received any return on their investment.

DOC Position: We verified during the course of this investigation that the respondents received shares in certain investment funds and companies. In addition, in our recent investigation of *Certain Agricultural Tillage Tools from Brazil*, we verified that the respondents were receiving dividends from the same funds and companies that the ethanol distillers have invested in. Therefore, we find it is appropriate to deduct the investment credits in calculating the effective tax rate of each distiller.

Comment 20: Petitioners contend that, in calculating benefits under the income tax exemption for export earnings program, the Department erred in not adjusting respondents' tax liabilities for the surtax on excess profits, as in our recent investigation of *Certain Agricultural Tillage Tools from Brazil*.

DOC Position: We did not adjust respondents' tax liabilities for the surtax on excess profits at the time of the preliminary determination because we had tax returns for only a few of the distillers subject to this investigation. Now that we are in possession of the income tax returns of all the respondents we have in fact, followed our recent precedent, and have adjusted respondents' tax liabilities for the surtax on excess profits.

Comment 21: Petitioners contend the Department also erred in calculating export earnings eligible for the exemption by erroneously basing it on the income tax on the "portion of profits attributable to export revenue." The Department should instead have determined for each distiller and exporter the actual company-wide profits and the proportion of total sales which were exported.

DOC Position: In calculating the income tax exemption for export earnings, we do, in fact, use respondents actual company-wide profits and the proportion of total sales which were exported.

Comment 22: Petitioners contend the Department, in calculating the benefit arising from the income tax exemption

on export earnings, should have indexed the respondents' tax liabilities for inflation, as it did in *Certain*

Agricultural Tillage Tools from Brazil.

DOC Position: For purposes of our final determination, we have indexed the respondents' tax liabilities, in accordance with Brazilian tax law.

Comment 23: Petitioners argue that the benefit derived from the income tax exemption for export earnings should be allocated over export sales and not total sales, since this exemption is tied to exports and is not available to firms which have only domestic sales.

DOC Position: We agree. See answer to respondents' Comment 5 below.

Comment 24: Petitioners contend that BNDESPAR's purchase of equity in Usina Costa Pinto was inconsistent with commercial considerations since Usina Costa Pinto, like many other distillers, has been on the verge of bankruptcy since at least 1983. The mere fact that certain banks were also involved in the equity acquisition of Usina Costa Pinto should not prevent a finding of unequityworthiness.

DOC Position: The bankruptcy to which petitioners refer concerns another company, Costa Pinto Industria e Comercio Ltda., which we verified was not related to Usina Costa Pinto. We verified that IBRASA/BNDESPAR's purchase of a small percentage of Usina Costa Pinto stock was made on the same conditions and terms as those offered to, and paid by, other private banks in the stock offer. We also note that Usina Costa Pinto has been a consistently profitable company.

Comment 25: Petitioners contend that the redirection of PETROBRAS' oil-derived profits to its unprofitable ethanol activities clearly confers a countervailable subsidy on these activities and should be treated as grants.

DOC Position: Our determination with respect to PETROBRAS is discussed in the section on "Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERNOR."

Comment 26: Petitioners contend the Department should countervail PROALCOOL financing by PETROBRAS.

DOC Position: Our determination with respect to these loans is addressed in the section on "Government Debt and Equity Infusions into PETROBRAS/INTERBRAS/INTERNOR."

Comment 27: Petitioners contend that the provision by PETROBRAS of working capital, in the form of equity infusions, to meet INTERBRAS' heavy liabilities in 1983 and 1984 is an export subsidy at least as far as this working capital was used to support

INTERBRAS' highly unprofitable ethanol export activities.

DOC Position: Our determination with respect to PETROBRAS' equity infusions in INTERBRAS/INTERNOR is discussed in the section on "Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERNOR."

Comment 28: Petitioners contend that INTERBRAS' equity infusions into INTERNOR in 1984 is a subsidy since the latter was absolved of a heavy dollar-denominated liability in exchange for more stock from its parent. Given the fact that INTERNOR is wholly-owned by the PETROBRAS family, additional stock purchases enhanced neither PETROBRAS' nor INTERBRAS' direct equity position in the venture. Furthermore, in all the years of its existence except 1984, INTERNOR appears to have operated at a loss.

DOC Position: Our determination with respect to INTERNOR's debt-to-equity conversion is discussed in the section on "Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERNOR."

Comment 29: Petitioners contend that, in its quantification of equity subsidies from PETROBRAS to INTERBRAS/INTERNOR, the Department should trace the government funds flowing through PETROBRAS companies' equity accounts to its ethanol operations. The Department should either adopt the formula developed in *Industrial Nitrocellulose from France* and compare the rate of return on ethanol sales to INTERBRAS' and INTERNOR's rates of return on all other products, or measure the actual net operating losses arising from INTERBRAS' sales of ethanol.

DOC Position: Our determination with respect to PETROBRAS is discussed in the section on "Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERNOR."

Comment 30: Petitioners contend that research and development assistance to ethanol distillers and sugar cane growers should be treated as a subsidy notwithstanding the nominal general availability of such benefits in Brazil. *De facto* availability in this case indicates that the programs in question are targeted to distillers and cane growers as the two major actors in the production of fuel ethanol (see *Cabot Corp. v. United States* and *Agrexco Agricultural Export Co., Ltd. v. United States*).

DOC Position: The Department has verified that research and development assistance in Brazil is not limited or "targeted" to ethanol distillers and sugar cane growers. Instead, the government provides research and development for all sectors of Brazilian agriculture,

including but not limited to genetic research, soils, pork, cattle and forest industry programs.

Section 771(5) of the Act, in describing governmental benefits which should be viewed as domestic subsidies under the law, clearly limits such subsidies to those provided "to a specific enterprise or industry, or group of enterprises or industries." We have followed this statutory standard consistently, finding countervailable only the benefits from those programs which are applicable and, in fact, available only to one company or industry, a limited group of companies or industries, or companies or industries located within a limited region or regions within a country. See, e.g., "Final Affirmative Countervailing Duty Determination; Certain Steel Products from Belgium," 49 F.R. 39304, 39328 (1982), and "Final Negative Countervailing Duty Determination; Fresh Cut Flowers from Mexico" (49 F.R. 25007). We do not agree with the decisions in *Cabot Corp. v. United States*, Slip op. 85-102 (Ct. Int'l Trade Oct. 4, 1985) (presently on appeal to the Court of Appeals for the Federal Circuit), and *Agrexco Agricultural Export Co., Ltd. v. United States*, 604 F. Supp. 1238 (Ct. Int'l Trade 1985). In *Carlisle Tire and Rubber Company v. United States*, 564 F. Supp. 834 (Ct. Int'l Trade 1983), the Court approved the Department's specificity test.

Comment 31: Petitioners contend that regional development programs administered by the government of Brazil bestow subsidies irrespective of whether any exports to the United States originated from these regions since these programs have spurred the production of ethanol in non-profitable areas, thereby diverting ethanol produced in profitable regions to the United States.

DOC Position: Petitioners' allegation does not set forth a countervailable subsidy. Producers in regions which are exporting do not obtain an actual benefit from regional programs. Therefore, no countervailability exists.

Comment 32: Petitioners contend that PETROBRAS storage assistance to the ethanol industry is a subsidy and the absorption by PETROBRAS of those costs normally borne by producers and exporters of ethanol should be treated as direct grants.

DOC Position: We ascertained during verification that fuel ethanol distillers pay PETROBRAS the same rates for use of its storage facilities that PETROBRAS pays the distillers for the same service. Additionally, we found no evidence that PETROBRAS built storage tanks for use by the distillers, or that it provided the

distillers with free use of its storage facilities.

Comment 33: Petitioners contend the Department should find that PETROBRAS storage assistance is offered on preferential terms since the documented difference between PETROBRAS' government-regulated storage charges and the rates charged by private companies have not been explained.

DOC Position: Since we ascertained during verification that fuel ethanol distillers paid PETROBRAS the same rates for use of its storage facilities that PETROBRAS pays the distillers for the same service, we find that no preferentiality exists with respect to PETROBRAS storage assistance. Although there was one instance in which PETROBRAS was charged more than the uniform storage rate, circumstances surrounding that transaction indicate that it was an exception to the normal commercial practice.

Comment 34: Petitioners contend that PETROBRAS' practice of early payment and pre-payment for ethanol deliveries is a subsidy and should be treated as a zero-interest loan with terms running from the date of payment to the date of receipt normally expected under standard commercial practice.

DOC Position: Because of the agricultural commodity nature of this industry, delivery delays simply reflect the necessary stockpiling and withdrawal from consumption during the three-to-five month period when sugar cane harvesting stops. We found during verification that PETROBRAS paid COPERSUCAR and several independent distillers two weeks after invoicing, which does not differ from standard commercial practice in Brazil.

Comment 35: Petitioners contend that PETROBRAS payment terms are countervailable since in a country where the monthly inflation rate is over 10 percent, government-mandated payment terms of 15 days which are one-half to one-quarter those of commercial terms are highly preferential.

DOC Position: We verified that 15-day payment terms are not an unusual commercial practice in Brazil.

Comment 36: Petitioners contend that the Department failed in its analysis of export subsidies to consider deliveries by distillers to trading companies. Since under Brazilian law these transactions are considered an export, petitioners argue the Department should determine whether distillers are benefitting from any of the various export financing programs available in Brazil, as well as other export incentives such as BEFIEX, CIEIX, and accelerated depreciation.

DOC Position: We verified that none of the responding distillers or trading companies benefited from any of the above-mentioned programs during the review period.

Comment 37: Petitioners contend that the FUNPROCUCAR program should be treated as a subsidy since FUNPROCUCAR loans could also benefit the production of "poor" molasses, which serves as an input for ethanol.

DOC Position: We have countervailed FUNPROCUCAR loans because the machinery purchased with these loans is used in the production of ethanol as well as refined sugar. See section on "FUNPROCUCAR Long-Term Loans."

Comment 38: Petitioners contend that the assumption and restructuring of COPERSUCAR's debt by IAA saved the cooperative from bankruptcy in 1981, and that COPERSUCAR thereby received a countervailable benefit.

DOC Position: We disagree. The facts on the record of this case demonstrate that there was no such debt assumption and restructuring. As discussed above, we did countervail a loan from IAA to COPERSUCAR.

Comment 39: Petitioners claim that since long-term cruzeiro financing was not available to any borrowers at the time of the IAA loan to the distiller's cooperative, the Department should use a dollar-denominated benchmark and calculate the benefit arising from the preferential interest rate and government assumption of exchange rate risks.

DOC Position: We were able to demonstrate at verification that long-term cruzeiro financing, in the form of BNDES and FINAME loans, was available to borrowers at the time of the IAA loan.

Comment 40: Petitioners contend that, if the Department chooses to use a cruzeiro benchmark, it should find COPERSUCAR uncreditworthy, use the highest cruzeiro interest rate available in Brazil, and apply an appropriate risk premium.

DOC Position: Since we found COPERSUCAR to be creditworthy, we did not need to construct a benchmark for an uncreditworthy company.

Comment 41: Petitioners contend that a number of distillers have received FINAME, BADESP/PROTAN, and other working capital loans on terms which are highly preferential. Given the preferentiality and specificity of these loan programs, petitioners argue that they should be countervailed as subsidies.

DOC Position: We found at verification that BADESP/PROTAN loans to distillers are in reality repassed

loans from BNDES. As stated in the program section "PROALCOOL Industrial Loans to distillers," both BNDES and FINAME loans have been found not countervailable in previous determinations because they are not limited to an enterprise or industry or group of enterprises or industries. Although several distillers had working capital loans from private commercial banks, we found nothing in the terms of these loans that would lead us to conclude that they were made on non-commercial terms.

Comment 42: Petitioners contend that any subsidies received by sugar cane growers sharing common ownership with distillers should be countervailed directly and not subject to upstream subsidy analysis.

DOC Position: We disagree. When the allegedly subsidized suppliers of the input product are distinct from the producers of the product under investigation, we analyze whether the alleged subsidies are passed through under the upstream provision [see "Initiation of a Countervailing Duty Investigation; Certain Table Wine from Italy" (50 F.R. 40584)]. In this case, although there is common ownership of the ethanol distillers and sugar cane growers, they are organized as separate companies, and the prices charged for sugar cane cannot be considered as inter-corporate transfer prices. Where a distiller also comprised sugar cane operations, we countervailed the PROALCOOL agricultural credits received by the distiller (see the section on "PROALCOOL Agricultural Credits to Distillers").

Comment 43: Petitioners argue that the Department should investigate the nature of the IAA price adjustments claimed by sugar cane growers. If these are straight grants untied to any revaluation of the goods sold, they should be excluded from the total sales value and countervailed as a subsidy.

DOC Position: We verified that these price readjustments were merely the regular revaluation of prices which the IAA makes three times a year, usually in February, June, and October, to counter the effects of inflation. Therefore, these adjustments are not subsidies and have been included in the sugar cane growers' total sales value.

Comment 44: Petitioners contend that the scope of investigation section should also encompass "wet" non-fuel grade ethanol transported from Brazil to the Caribbean Basin region, "dried" there, and then exported to the United States for use as a motor fuel additive.

DOC Position: The issue concerning wet Brazilian non-fuel grade ethanol

which is shipped to third countries to be dehydrated into anhydrous fuel ethanol for export to the United States was first raised in petitioners' prehearing brief. As we have no knowledge of actual shipments of this nature, originating from Brazil, entering into the United States, we determine that a clarification of the scope of our determination would be premature. If, at the time of any administrative review there is evidence of such imports, the Department will address the issue more fully.

Comment 45: Petitioners contend that the respondents' failure to provide English translations of all documents has hindered the Department in verifying the government of Brazil's claims and has deprived petitioners of the opportunity to participate meaningfully in this investigation. Petitioners argue that the Department should resolve all subsidy issues for which respondents submitted untranslated responses by using information contained in petitioner's submissions as "best information available" for the final determination.

DOC Position: Section 355.39(e) of the Department's regulations states that "[a]ll responses to requests for information must be in English . . . unless such requirement is waived." In cases where large quantities of voluminous documents are submitted in support of a questionnaire response, we have often waived the translation requirement for documents such as annual reports and descriptive brochures that would be overly lengthy and costly to translate if we felt that the Department's investigative staff was able to analyze these documents in the original language. Respondents' failure to provide English translations of all documents did not hinder the Department in its verification of respondents' submissions. We have not, therefore, resorted to best information available in our final determination. Furthermore, petitioners' comment regarding its lack of meaningful participation caused by untranslated documents was not made until a point too late for us to determine whether to require respondents to resubmit their information.

Comment 46: Petitioners argue that the Department has been placed at a distinct disadvantage due to the respondents' incomplete and untimely responses to the Department's questionnaires. With respect to any data outstanding, the Department should use "best information available" to complete the record for the final determination.

DOC Position: We disagree. We consider the responses we have received to be substantially complete

and to have been submitted in time for us to analyze and verify them.

Comment 47: Petitioners argue the Department should not use any information submitted by the government of Brazil later than the date petitioners received the confidential versions of the verification reports, since it would allow respondents to "paper" unfairly the record after the effective closing date for petitioners' comments.

DOC Position: We disagree. Documentation submitted by the respondents since the verification does not consist of new information, but rather consists of clarifications, requested by the Department's staff, of existing responses. This information merely substantiates previously verified information and is not in itself the basis for the Department's determination.

Comment 48: Petitioners contend that the Department's doctrine of "general availability" should not be applied to any of the subsidies under investigation in this proceeding (debt restructuring, PROALCOOL loans and regional R&D). Petitioners argue that the Department's "general availability" doctrine is inconsistent with the countervailing duty statute and with recent court decisions.

DOC Position: The Department's doctrine of "general availability" is appropriately applied to the programs listed by petitioners since Section 771(5) of the Act, in describing governmental benefits which should be viewed as domestic subsidies under the law, clearly limits such subsidies to those provided "to a specific enterprise or industry, or group of enterprises or industries." In light of the Court's decision in *Carlisle Tire and Rubber Co. v. United States*, upholding the Department's standard for finding that benefits are generally available, we are not following the standard adopted by the Court in *Cabot or Agrexco*. See response to petitioners' Comment 30.

Respondents' Comments

Comment 1: Respondents assert that the Department's use of anhydrous alcohol sales as the denominator in calculating the benefit accruing to ethanol distillers from PROALCOOL industrial credits was inappropriate, since these credits were used to purchase machinery used in the manufacture of sugar and other products as well. In light of this assertion, respondents contend that we should have used total sales by the distillers as our denominator.

DOC Position: By reviewing PROALCOOL industrial loan contracts, we verified that the funds were used to purchase machinery used in the

production of sugar, molasses, and other products. Accordingly, we are now allocating the benefit from PROALCOOL industrial credits over total sales.

Comment 2: Respondents argue that the hypothetical composite benchmark used to value benefits from PROALCOOL loans violates the Department's policy with respect to long-term loans as articulated in the Subsidies Appendix. Moreover, the amount of the benefit found has been artificially inflated because the Department cannot assume the companies borrowed the maximum amount under PROALCOOL, nor that the companies would have borrowed any additional funds to cover the eligibility differential. Therefore, the Department should use the agricultural or agro-industrial loan interest rate as the benchmark most reflective of any economic benefit.

DOC Position: As explained above, we have used BNDES and FINAME loans as benchmarks for PROALCOOL industrial loans to distillers because these loans are company-specific or represent what a comparable firm would otherwise have paid had it not obtained PROALCOOL industrial financing. Therefore, we have not used a composite benchmark for those loans.

We have continued to use the composite benchmark for PROALCOOL agricultural loans. While agricultural loans are the best representation of interest rates these firms would otherwise have paid for loans to finance cane growing operations, the level of financing available under the agricultural program was, by regulation, less than the level of financing from PROALCOOL. Therefore, it is not unreasonable to assume that additional funds would have to have been obtained elsewhere. Moreover, while borrowers may not always have used the maximum amount of financing available under PROALCOOL, it is just as likely that borrowers under the agricultural loan program did not obtain the maximum amounts. Therefore, it is reasonable to assume that the different maximum eligibility levels under each program reflect the relative differences in amounts borrowed.

Comment 3: Respondents contend that PROALCOOL credits are not countervailable since they were substantially financed by World Bank funds.

DOC Position: Funds provided by multinational organizations, such as the World Bank, are not countervailable [see *Certain Textile and Textile Mill Products from the Philippines*, 49 FR

34301 (1984) (initiation), and *Non-Rubber Footwear from Brazil*, 49 FR 9901 (1983) (preliminary)]. Under section 701(a) of the Act, the Department must determine whether "a country under the Agreement" or "a person who is a citizen or national of such a country, or a corporation, association, or other organization organized in such a country" is providing a subsidy with respect to a class or kind of merchandise. The World Bank is not a "country under the Agreement" as defined by section 701(a). Therefore, the portion of the funds provided under the PROALCOOL program after June 1981 which represents the financing of the World Bank is not countervailable.

Comment 4: Respondents contend that the Department, in calculating the benefit arising from the income tax exemption for export earnings, failed to use the respondents' effective tax rates.

DOC Position: See answer to petitioners' comment 19.

Comment 5: Respondents contend that the income tax exemption for export earnings is a domestic subsidy. Therefore, the Department should have allocated the benefit arising from this exemption over total sales rather than total exports.

DOC Position: We disagree. When a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received depends directly or indirectly on the firm's level of exports, that program confers an export subsidy. The fact that the firm as a whole must be profitable to benefit from the program does not detract from the program's basic function as an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenues instead of total revenues.

Comment 6: Respondents argue that the Department was incorrect in concluding that a loan provided by the IAA to COPERSUCAR bestowed a countervailable benefit since the interest rate provided on the loan was within the range of generally available long-term loan rates in Brazil.

DOE Position: We used as a benchmark for the loan to COPERSUCAR the terms paid by its member distillers for long-term financing in 1981. We consider COPERSUCAR to be comparable to its member distillers. Therefore, their loan rates are to be preferred as a benchmark over loan rates obtained by firms in other investigations.

Comment 7: Respondents contend that petitioners' allegations regarding the circumstances surrounding the IAA loan are incorrect. A review of

COPERSUCAR's audited financial statements reveals that, not only did COPERSUCAR not have any overseas debt, but also that the cooperative's total debt did not approach the level alleged by petitioners.

DOC Position: We agree. See the section on "IAA Financing" above.

Comment 8: Respondents argue that the Department was correct in investigating subsidies only to producers who export to the United States. Moreover, basing the finding on firms which account for 60 percent of exports to the United States was consistent with the law and past practice.

DOC Position: We agree. See responses to petitioners' comments 1 through 5.

Comment 9: Respondents claim that the alleged subsidies to PETROBRAS are not countervailable since (i) PETROBRAS only sells its product in the domestic market; (ii) there is no evidence that the government of Brazil paid more for its shares than that paid by private shareholders; (iii) there have been no new cash equity infusions in PETROBRAS by the government of Brazil for the ten years; (iv) PETROBRAS has been one of the most profitable companies in Brazil; and (v) PETROBRAS stock is one of the highest priced, actively traded, and most attractive stocks in the Brazilian stock market.

DOC Position: Our determination with respect to PETROBRAS is discussed in the section on "Government Debt and Equity into PETROBRAS/INTERBRAS/INTERNOR."

Comment 10: Respondents contend that petitioners' request to review return on investment in ethanol operations is misplaced since any equity infusion is provided to an entire company and not to a specific department of a company. Even if the Department accepts petitioners' approach, both PETROBRAS and INTERBRAS demonstrated during the verification that their respective ethanol operations were profitable during the review period.

DOC Position: Our determination with respect to this allegation is discussed in the section on "Government Debt and Equity into PETROBRAS/INTERBRAS/INTERNOR."

Comment 11: Respondents claim that PETROBRAS' equity infusion into INTERBRAS are commercially reasonable and are not countervailable since INTERBRAS has had a profit in every year since it began operations and private investment in PETROBRAS logically prohibits it from providing equity infusions in any corporation which is not equityworthy.

DOC Position: Our determination with respect to PETROBRAS' equity infusions into INTERBRAS is discussed in the section on "Government Debt and Equity Infusions into PETROBRAS/INTERBRAS/INTERNOR."

Comment 12: Respondents argue that petitioners' allegation regarding conversion of INTERNOR's debt into equity is inaccurate. There is no evidence on the record that this debt conversion was not based upon commercial considerations.

DOC Position: Our determination with respect to INTERNOR is discussed in the section on "Government Debt and Equity Infusions into PETROBRAS/INTERBRAS/INTERNOR."

Comment 13: Respondents argue that government equity infusions in Costa Pinto are not countervailable since IBRASA's purchase of stock in Costa Pinto was made on the same conditions and terms as those offered to, and paid by, other private banks in the stock offering.

DOC Position: We agree. See answer to petitioners' comment 24.

Comment 14: Respondents claim that fuel ethanol does not benefit from government assistance for research and development since virtually all agricultural research and development is conducted by the government of Brazil and is generally available to the public, thereby meeting criteria enunciated in *Cabot Corp. v. United States*. Unlike the situation in *Agrexco Agricultural Export Co. Ltd. v. United States*, respondents argue that they have provided information to the effect that the government of Brazil conducts virtually all agricultural research and development.

DOC Position: We agree that the research and development conducted by the government of Brazil is not limited to specific sectors of Brazilian agriculture. Additionally, research papers generated under these programs are published and made available to all interested parties.

Comment 15: Respondents contend that fuel ethanol does not benefit from PETROBRAS storage facilities since it was shown at verification that distillers were charged for and paid for storage; that the rate charged by PETROBRAS was exactly the same rate charged by the distillers to PETROBRAS for storage; that storage charges are fixed by government regulations and are adjusted according to variations in the price of ethanol. Moreover, there was no evidence that PETROBRAS constructed tanks for distillers or provided free use of storage tanks.

DOC Position: Our determination with respect to this issue is discussed in the

section on "PETROBRAS Storage Assistance."

Comment 16: Respondents claim that petitioners' allegation that PETROBRAS pays in October for ethanol deliveries in May is incorrect. Ethanol is produced over a seven-month period, paid for over a nine-month period, and delivered over a twelve-month period. This schedule reflects the agricultural commodity nature of the product. Since ethanol is produced prior to payment, petitioners' allusion to interest-free working-capital loans is specious. Also, the 15-day payment terms between PETROBRAS and the distillers are normal in the Brazilian economy.

DOC Position: Our determination with respect to this issue is discussed in the section on "PETROBRAS Payment Terms."

Comment 17: Respondents argue that the Department should disregard amendments to the original petition which have not been filed concurrently with the ITC as they are in violation of 19 C.F.R. 355.26(e).

DOC Position: The Department does not consider petitioners' submissions, received after the preliminary determination but before verification, to be amendments to the original petition. In their submissions, petitioners clarified their original allegations and set forth commentary on the questionnaire responses and on the proposed verification outline.

Comment 18: Respondents contend that the Department has initiated investigations into numerous new allegations without even satisfying the threshold initiation requirements for an original petition (19 CFR 355.27).

DOC Position: The Department's investigation of petitioners' allegations has satisfied the threshold initiation requirements of 19 CFR 355.27. The allegations under investigation properly allege a basis on which a countervailing duty may be imposed under 701(a) of the Act. Furthermore, the Department has the authority to investigate any potential subsidy programs it discovers during the course of the investigation.

Comment 19: Respondents contend that petitioners' allegations regarding the "uncreditworthiness" of the ethanol industry are misplaced since (i) creditworthiness is a company-specific issue; (ii) commercial banks have determined that each loan was commercially reasonable and the Department should not second-guess such decisions; (iii) neither the members of COPERFLU nor COPERFLU itself are subject to this investigation; (iv) COPERFLU is one of the largest and strongest private companies in Brazil and a review of its payments on interest

and principal demonstrates that it is a reliable borrower.

DOC Position: We have addressed in this notice the company-specific allegations of uncreditworthiness presented by the petitioners, and have found COPERFLU to be creditworthy based on the financial positions of its members in the years immediately preceding the IAA loan.

Comment 20: Respondents argue that petitioners' suggestion that the scope of investigation be expanded to include hydrous exports from Brazil which are then transformed to anhydrous in third countries is incorrect, since the United States Customs Service has reaffirmed that dehydration of hydrous ethanol constitutes a substantial transformation and this product subsequently cannot be considered fuel ethanol from Brazil and is outside the scope of this investigation.

DOC Position: The Department is not bound by United States Customs Service determinations. *Royal Business Machines, Inc. v. United States*, 507 F. Supp. 1007 (Ct. Int'l Trade 1980), *affd*, 669 F.2d 691 (Fed. Cir. 1982) recognized that the Department has the authority not only to define the scope but also to clarify the statement of scope of an investigation. Since petitioners' allegation regarding wet ethanol was received very late in this proceeding, and we have no evidence that any wet ethanol originating from Brazil has entered the United States, we are not resolving this issue at this time, but reserve the right to clarify the scope of investigation in any subsequent administrative review that may occur under section 751 of the Act or in a separate scope ruling.

Negative Determination of Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of fuel ethanol from Brazil. Under section 705(a)(2) of the Act, we must determine whether critical circumstances exist as alleged under 703(e)(1) of the Act. Critical circumstances exist when the Department finds that (1) the alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"), and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Based upon our analysis, we have determined that the government of Brazil is providing an export subsidy to

fuel ethanol under the income tax exemption for export earnings.

Accordingly, we must now determine whether there have been massive imports over a relatively short period of time. In making this determination, we normally consider the following factors: (1) Whether recent imports have increased significantly; (2) whether recent import penetration ratios have increased significantly; (3) whether the pattern of recent imports may be explained by seasonal factors; and (4) whether recent imports are significantly above imports calculated over the last three years.

In this case, Department of Commerce statistics indicate that imports of the subject merchandise have not surged over a relatively short period of time within the meaning of section 703(e) of the Act. Therefore, for the reasons described above, we determine that critical circumstances do not exist with respect to fuel ethanol from Brazil.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government officials, inspection of documents and ledgers, and tracing the information in the responses to source documents, accounting ledgers, and financial statements.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all unliquidated entries of fuel ethanol from Brazil entered, or withdrawn from warehouse, for consumption, on or after November 12, 1985. As of the date of publication of this notice in the *Federal Register*, the Customs Service should require a cash deposit or bond of 2.60 percent *ad valorem* for each such entry of this merchandise. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential 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.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry 45 days after the date of 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 injury exists, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on fuel ethanol from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of the suspension of liquidation as indicated in the "Suspension of Liquidation" section of this notice, equal to the net subsidy of 2.60 percent *ad valorem*.

This notice is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

Paul Freedenberg,

Assistant Secretary for Trade Administration,
January 21, 1986.

[FR Doc. 86-1706 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-583-504]

Extension of the Deadline for Final Countervailing Duty Investigation Determination; Oil Country Tubular Good From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, the Lone Star Steel Company and CF&I Steel Corporation, the Department of Commerce is extending the deadline for its final determination in the countervailing duty investigation of oil country tubular goods from Taiwan to correspond to the date of the final determination in the antidumping investigation of the same product pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573).

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW.,

Washington, DC 20230; telephone (202) 377-0169 or 377-2830.

SUPPLEMENTARY INFORMATION:

Case Histories

On July 22, 1985, we received antidumping duty and countervailing duty petitions filed by the Lone Star Steel Company and CF&I Steel Corporation on oil country tubular goods from Taiwan.

In compliance with the filing requirements of § 353.26 of our regulations (19 CFR 353.36), the antidumping duty petition alleged that imports of oil country tubular goods 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 materially injure, or threaten material injury to, a U.S. industry.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petition alleged that manufacturers, producers, or exporters in Taiwan of oil country tubular goods 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 petitions contained sufficient grounds on which to initiate antidumping duty and countervailing duty investigations, and on August 12, 1985, we initiated these investigations. On September 23, 1985, we received a timely request by petitioners for an extension of the deadline date for the preliminary countervailing duty determination. An extension was granted on September 26, 1985 (50 FR 40580). On November 29, 1985, we issued a negative preliminary determination in the countervailing duty investigation. The preliminary determination in the antidumping duty investigation was made on December 30, 1985.

On December 4, 1985, petitioners filed a request for an extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the date of the final determination in the antidumping duty investigation.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, shall extend the date of the

final determination [in the countervailing duty investigation] to the date of the final determination" in the antidumping duty investigation (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, the Department is granting an extension of the deadline for the final determination in the countervailing duty investigation of oil country tubular goods from Taiwan to March 17, 1986, the current deadline for the final determination in the antidumping duty investigation.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

January 14, 1986.

[FR Doc. 86-1705 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-503]

Preliminary Affirmative Countervailing Duty Determination; Rice From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Thailand of rice. The estimated net bounty or grant is 1.57 percent *ad valorem*. However, we are taking into account several program-wide changes which occurred after our review period, but prior to this determination, and we are adjusting the bonding rate accordingly. We are directing the U.S. Customs Service to suspend liquidation of all entries of rice from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to 1.60 percent *ad valorem*.

If this investigation proceeds normally, we will make our final determination by April 3, 1986.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Loc T. Nguyen or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Telephone (202) 377-0167 or (202) 377-2830.

SUPPLEMENTARY INFORMATION:**Preliminary Determination**

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Thailand of rice. The following programs are preliminarily found to confer bounties or grants:

- Export Packing and Stocking Credits.
- Investment Promotion Act.
- Price Support and Stabilization Program.
- Marketing Organization of Farmers' Fertilizer Program.
- Paddy Rice Mortgage Program.
- Supplementary Program to Implement the Government's

Rice Policy—Preferential Financing to Rice Millers. We preliminarily determine the estimated net bounty or grant to be 1.57 percent *ad valorem* for all manufacturers, producers, or exporters in Thailand of rice. However, we are adjusting the bonding rate to reflect several program-wide changes that occurred after our review period. Thus, the cash deposit or bond on entries of this product will be 1.60 percent *ad valorem*.

Case History

On September 24, 1985, we received a petition from the Rice Millers' Association on behalf of the U.S. rice industry. 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 Thailand of rice receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation and, on October 15, 1985, we initiated such an investigation (50 FR 42581). We stated that we expected to issue a preliminary determination by December 18, 1985.

On November 29, 1985, we determined this investigation to be "extraordinarily complicated" as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determination by 30 days until January 17, 1986.

Since Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303(a) (1) and (b) of the Act apply to this investigation.

Accordingly, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry.

We presented a questionnaire to the government of Thailand in Washington, DC, on October 24, 1985. The responses to our questionnaire were received on December 6 and December 30, 1985.

Scope of the Investigation

The product covered by this investigation is rice, both milled and unmilled, and includes all varieties of rice. Rice is currently classified in the *Tariff Schedules of the United States Annotated* (TSUSA) under items 130.5000, 130.5600, 130.5800, 131.3000, and 131.3300 according to the type and level of processing.

Analysis of Programs

Throughout this notice, we refer to certain principles applied to the facts of the current investigation. 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).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, of course, are subject to verification. If the response cannot be supported at verification and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

It is the Department's policy to take into account program-wide changes where these are implemented after the review period, but before a preliminary determination, with the result that the rate for cash deposit or bonding purposes is raised or lowered, as appropriate. This policy is desirable because it promotes the expeditious elimination or curtailment of bounties or grants. The recognition of program-wide changes also permits the Department to adjust the bonding rate to correspond as nearly as possible to the eventual duty liability.

In this investigation we have discovered that, subsequent to the review period, but prior to this preliminary determination, two programs have been newly instituted resulting in a fundamental change in the bestowal of benefits. Descriptions of these program-wide changes, and of our treatment of them, follow in this section of the notice.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants is calendar year 1984.

The Upstream Issue

In a letter dated November 1, 1985, the government of Thailand argued that the government's provision of subsidized fertilizer to the Thai rice industry constitutes an "upstream subsidy" under section 771A(a) of the Tariff Act of 1930, as amended, because fertilizer is an "input product" in the production of rice. We disagree. In this case, the government of Thailand is not providing assistance to the producers of fertilizer, but rather directly to the growers of rice, the product under investigation, by acquiring fertilizer for distribution to the latter on a preferential basis.

On January 6, 1986, the government of Thailand once again brought up the upstream issue, this time arguing that paddy (rice) is an upstream input of milled rice and the Department should therefore investigate subsidies bestowed on paddy (rice) only under the upstream subsidy provisions of the countervailing duty law. The government of Thailand further argued that the Department should dismiss all allegations of subsidies bestowed on "paddy growing" because the petition does not offer any evidence to satisfy the statutory requirements for countervailing upstream subsidies. We disagree. In a case concerning an agricultural product such as this, it is inappropriate to term the raw product an "input" into the next stage or further processed product. The primary, if not the sole, purpose of all segments of the industry in this case is to produce a single end product—milled rice. Substantially all of the raw agricultural product, paddy or unmilled rice, is dedicated to the production of milled rice. The fact that beyond this stage other processed products can be made, e.g., rice wine, is irrelevant. The key is that there is a single, continuous line of production from paddy rice to milled rice. Therefore, we preliminarily determine that paddy rice, or unmilled rice, is not an "input" of milled rice. Consequently, the upstream subsidy provisions of the countervailing duty law are not applicable in this case.

Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Determined to Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Thailand of rice under the following programs:

A. Export Packing and Stocking Credits

Export packing and stocking credits are short-term loans used for either pre-shipment or post-shipment financing. These loans, which are provided through commercial banks, can be rediscounted at the Bank of Thailand through its export refinancing facility. Under the "Regulations Governing the Rediscount of Promissory Notes Arising from Exports" (B.E. 2514), the commercial banks, during the period for which we are measuring bounties or grants, charged the borrower a maximum of 7 to 9 percent interest per annum and then the bank rediscounted these loans at 5 to 7 percent interest with the Bank of Thailand. These loans are provided in baht for up to 90 days.

Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates. As specified in the Subsidies Appendix, we used the most appropriate national average commercial method of short-term financing as the benchmark rate for short-term loans. In its response, the government of Thailand stated that an average interest rate charged by commercial banks in 1984 on short-term loans, bills, and overdrafts was 14.39 percent. This average interest rate was used as the benchmark in *Circular Welded Carbon Steel Pipes and Tubes from Thailand* (50 FR 32751) (Aug. 14, 1985). Comparing this average interest rate to the rate charged on export packing and stocking credits, we find that the rate on export packing and stocking credits is preferential, and, therefore, these loans confer bounties or grants on the products under investigation. Applying this average commercial bank interest rate as the benchmark, we calculated an estimated net bounty or grant of 0.872 percent *ad valorem*.

B. Investment Promotion Act

According to the response of the government of Thailand, the Investment Promotion Act (B.E. 2520) of 1977 provides incentives for investment to promote development of the Thai

economy. Administered by the Board of Investment, the Investment Promotion Act authorizes the exemption of import duties and certain taxes under sections 35 and 36. Section 35 provides various tax reductions to companies located in investment zones, set up at the discretion of the Board. Since only companies located in these zones may receive benefits under section 35, and since we are not yet able to determine the extent to which the government of Thailand limits which companies can receive these benefits, they appear to be targeted to specific regions. Section 36 provides various tax and custom duty exemptions to promote enterprises that export. The respondents indicate that section 36 benefits were not received by producers or exporters of rice.

The response identified Mah Boonkrong Rice Mill Co., Ltd., as the only rice firm that received benefits under the Investment Promotion Act. According to the respondents, Mah Boonkrong Rice Mill Co. received the benefits from this program under section 35. Although Mah Boonkrong Rice Mill was not located in one of the four investment promotion zones previously established by the Board of Investment, the Board designed the rice mill as a private investment promotion zone, thereby granting it benefits accorded to companies located in these zones. Mah Boonkrong Rice Mill received business tax reductions of fifty percent during the review period.

We preliminarily determine that section 35 of the Investment Promotion Act, which limits recipients to industries located in designated regions, confers a bounty or grant within the meaning of the countervailing duty law. Under our tax methodology, we calculate the country-wide benefit from this program by dividing the amount of the tax reduction claimed by Mah Boonkrong Rice Mill on its tax return filed during the review period by the total value of milled rice during the review period. On this basis, we calculated an estimated net bounty or grant of 0.007 percent *ad valorem*.

C. Price Support and Stabilization Program

The support and stabilization of the price of rice in Thailand is undertaken by two government agencies, the Public Warehouse Organization (PWO) and the Marketing Organization for Farmers (MOF), and one private organization, the Agricultural Cooperative Federation of Thailand (ACFT).

1. According to the responses, the PWO, chaired by the Minister of Commerce, is charged with carrying out activities concerning rice, agricultural

products, and other products in order to ensure that their quantity, quality, and prices are appropriate and that the supply is sufficient to meet the demand of the state and the public. The PWO can trade for its own account or pursuant to special instructions from the Minister of Commerce. Funds are received from the Farmers Assistance Fund (FAF) in the form of loans repayable at an interest rate of 2 percent annually. The PWO may sell in the domestic market or for export. The response states, however, that no exports by the PWO have ever gone to the United States. Therefore, we determine that this particular program is not used.

2. The MOF operates under the Ministry of Agriculture and Cooperatives with the objective of assisting farmers and farmers' associations by intervening in the market for paddy rice in order to raise the market price for paddy rice during certain periods in the harvest year. According to the responses, the activities of the MOF are funded by the FAF, and the MOF has performed similar functions as necessary with respect to products other than rice.

3. The ACFT is a private association of farmers operating at the district, provincial, and national levels. Among the objectives of the ACFT are the provision of funds to farmers in return for paddy rice which is then marketed, the provision of fertilizer to farmers financed against paddy production, and the provision of warehouse facilities for rice and fertilizer. In both 1984 and 1985, the ACFT received working capital loans from the FAF. These were one year loans at two percent interest per annum. The loans were used for purchases of fertilizer for sale to farmers and to undertake milling and marketing operations.

Respondents argue that the price support and stabilization programs cover many agricultural products and are not countervailable because they are provided to more than a specific enterprise or industry, or group of enterprises or industries. Furthermore, the government of Thailand claims that these programs were financed by the FAF, which is, in turn, funded by an export premium on rice; therefore, they should not be found to confer bounties or grants.

Based on the information provided by respondents, we find that, although some agricultural products have benefited from these programs sporadically, we have no information that the price support and stabilization programs are being provided to all agricultural products, nor do we find

indications of any objective, identifiable criteria which would automatically trigger the price support mechanism. As a matter of fact, according to the responses, price support actions by the government-run organizations are taken only at the special instructions of the Ministry of Commerce or at the discretion of the Ministry of Agriculture. Therefore, based on the information received, price supports seem to be made only to selected agricultural producers at various levels for different commodities at various times, all at the discretion of the government. As such, we cannot conclude that these programs are available to more than a specific enterprise or industry, or group of enterprises or industries.

Nor can we, at this time, agree with respondents that the benefits conferred by these programs should be offset by the export premium. The Act makes very specific provisions as to what are permissible offsets. Section 771(6) of the Act authorizes the Department, for purposes of determining the net bounty or grant, to subtract from the gross bounty or grant the amount of:

(A) Any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the subsidy;

(B) Any loss in the value of the subsidy resulting from its deferred receipt, if the deferral is mandated by the government order; and

(C) Export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

This provision is the exclusive source of permissible offsets. Nothing which does not strictly fit the descriptions under section 771(6) is allowable as an offset.

Respondents have not shown to our satisfaction that the export premium on rice is "specifically intended to offset the subsidy received" nor is it a "payment in order to qualify for, or to receive, the benefit of the subsidy".

In fact, the description of the fund indicates a broad-based revenue-raising measure.

Because the price support and stabilization programs are limited to a specific enterprise or industry, or group of enterprises or industries, and because the funds provided to support these programs are not specifically intended to offset the subsidy received, we preliminarily determine that these programs confer bounties or grants on rice farmers. However, we preliminarily determine that of the two government-run organizations undertaking these programs, only one, the MOF,

participated in price support and stabilization for rice exported to the United States during the review period.

We requested information regarding the market price of rice by the MOF at the time of purchase in 1984, but respondents did not provide us with this information; therefore, to calculate benefits received under the MOF, we took the difference between the average farm price for rice in 1983 and the MOF support price for rice in 1983, as best information available, and multiplied it by the amount of rice the MOF purchased in 1983. This benefit was then divided by the total value of paddy rice for 1984, as best information available, to arrive at an *ad valorem* rate of 0.327 percent.

We also preliminarily determine that the preferential loans received by the ACFT for use in price support and stabilization for rice are countervailable. To calculate the benefits received under the ACFT, we took the total amount of loans acquired by ACFT from the FAF in 1984 and multiplied it by the difference between the two percent interest rate and the national average interest rate. The benefits were then divided by the total value of paddy rice to arrive at an *ad valorem* rate of 0.088 percent.

D. MOF Fertilizer Program

The MOF sells fertilizer to farmers, under certain conditions, at prices below market price. According to the responses, the fertilizer sales program of the MOF is limited to selling fertilizer to farmers certified by provincial officials as poor farmers or tenant farmers or those farmers whose total land area is 10 rai (approximately 4 acres) or less. In addition, there is a limitation of 500 kg. per farm or 50 percent of its requirements, whichever is less. The MOF sells four types of fertilizer, two of which are for use by rice farmers exclusively, and two of which can be used for rice as well as other grain and vegetable crops. The government of Thailand stated that, since eligibility for fertilizer purchases is not based on the crop for which the fertilizer is to be used but on the status of the farmer, the two types of fertilizer which can be used for other crops as well as rice cannot be traced to usage for growing rice. The respondents argue that this program is not specific to rice and that the benefits received by rice farmers are in proportion to the ratio of rice production to other crops. Furthermore, they argue that any benefit under this program was more than offset by the export premium on rice, the source of the funding for the program; therefore, this program is not countervailable.

Since two out of the four types of fertilizer sold under this program can be used only for growing rice, we believe that the benefit on these two types of fertilizer is limited to a specific enterprise or industry, or group of enterprises or industries. Since the other two types of fertilizer may be used not only for rice, but also for sugar cane, corn, casava, and most vegetable crops, we preliminarily determine that the benefit on these two types is not limited to a specific enterprise or industry, or group of enterprises or industries.

As to the respondents' argument regarding the offset, we have dealt with this issue under the "Price Support and Stabilization Program" section of this notice.

To calculate the benefit of the MOF fertilizer program, we took the total value of the two types of fertilizer used only for rice sold by the MOF in 1984 and multiplied it by the difference between the market price and the preferential price at which fertilizer was sold by the MOF to the farmers. This benefit was then divided by the total value of paddy rice in 1984 to arrive at an *ad valorem* rate of 0.279 percent.

E. Paddy Rice Mortgage Program

During the review period, this program did not exist. From January 1, 1985, through September 30, 1985, however, the Bank of Agriculture and Agricultural Cooperatives (BAAC) and the PWO participated in the paddy rice mortgage program. This program allows the grower to hold back paddy rice sales in times of depressed seasonal prices until prices recover. Under this program, the rice farmer can mortgage his rice for a period of five months by storing the paddy rice and obtaining a loan from the Bank of Agriculture and Agricultural Cooperatives (BAAC) equal to 80 percent of the value of the paddy rice against warehouse receipts. The loan is made at 14 percent interest, with half being paid by the farmer and half by the FAF. In addition, a 15 baht per month storage fee is charged by the PWO, half paid by the farmer and half by the FAF. The purpose of the program is to provide the farmer with income while he holds his paddy rice for sale at a time when he can realize higher prices for his rice.

Respondents argue that the benefit received under this program is not countervailable because (1) it is entirely offset by the export premium on rice; (2) the program is generally available; and (3) rice prices did not increase as expected.

We have dealt with the offset and general availability issues under the

"Price Support and Stabilization Program" section of this notice.

Section 771(5) defines the term subsidy to include "the provision of capital, loans or loan guarantees on terms inconsistent with commercial considerations." There is no doubt that the loans granted under the rice mortgage program were at terms inconsistent with commercial considerations, since the farmer paid only half the stated interest rate which is itself lower than the national average commercial rate. Whether the prices of rice rose enough that year for the farmer to make a profit is totally irrelevant to determining whether the preferential loan provides a countervailable benefit.

Because the Rice Mortgage Program is limited to a specific enterprise or industry, or group of enterprises or industries and because the terms of the loans are inconsistent with commercial considerations, we preliminarily determine that this program confers a bounty or grant. We have included this program in our cash deposit rate for the reasons mentioned earlier in this notice.

To calculate the benefit of the Rice Mortgage Program, we took the total amount of the loans given to rice farmers in 1985 times the difference in the 1985 national average commercial rate of 14.16 percent and the preferential rate of 7 percent (paid by the farmers) times the number of days the loans were outstanding, this benefit was added to the benefit received for rice storage. The total was then divided by the 1985 value of paddy rice to arrive at an *ad valorem* rate of 0.017 percent for duty deposit purposes.

F. Supplementary Program to Implement the Government's Rice Policy—Preferential Financing to Rice Miller

During the review period, this program did not exist, to our knowledge. In 1985, however, the Ministry of Agriculture and Cooperatives, in conjunction with eight commercial banks, established a program to provide low interest loans at 8.25 percent per annum to participating rice millers. One half of the loan is from the commercial bank charged at an interest rate of up to 16.5 percent and the other half is provided by the FAF at zero percent interest.

Under this program, a rice miller buys paddy rice from the farmer and pays an advance of 80 percent of the total value of the paddy rice based on the administered price. The rice miller also provides the farmer with a bank guarantee against the 20 percent of the value not paid at the time of receipt. The miller obtains a 180 day loan for the 80 percent of the value paid at an effective annual interest rate of 8.25 percent and

pays the bank one percent of the guarantee amount.

Because the Supplementary Program is limited to a specific enterprise or industry or group of enterprises or industries, and because the terms of the loans are inconsistent with commercial considerations, we preliminarily determine that this program confers a bounty or grant. We have included this program in our cash deposit rate for the reasons mentioned earlier in this notice.

According to the response, 60 percent of the loans to fund this program were given by the FAF at 0.00 percent interest and 40 percent were given by the banks at 16.5 percent interest. Therefore, to calculate the benefit, we weighted these percentages against the interest rate charged by the banks of 16.5 percent to arrive at a preferential interest rate of 6.6 percent. We then took the difference between the 1985 national average commercial interest rate of 14.16 percent and this preferential rate of 6.6 percent and multiplied it by the total value of the loans, times the number of days the loans were outstanding. This benefit was then divided by the total 1985 value of milled rice to arrive at an *ad valorem* rate of 0.008 percent for duty deposit purposes.

II. Program Determined Not to be Countervailable

Construction of Roads and Irrigation Facilities for Rice Producers

The petitioner alleges that producers and exporters of rice receive benefits through the construction of roads and irrigation facilities targeted to benefit rice producers. The government of Thailand stated that the rehabilitation and construction of roads to facilitate the transportation of agricultural goods is an obvious concern given the dominant position of agriculture in the Thai economy; however, it is only one of a number of objectives of the Thai government. Furthermore, road construction in rice growing areas has not been among the principal priorities of any of the highway development plans, because rice is grown predominantly in the lowland areas which are already quite developed. In fact, the emphasis on rural road construction and maintenance has been concentrated in upland areas where crops such as maize, sugar-cane, cassava, jute, and para-rubber are grown.

As for the construction of irrigation facilities, the government of Thailand stated that the Department of Royal Irrigation of the Ministry of Agriculture and Cooperatives, whose functions are similar to those of the U.S. Bureau of

Reclamation and the U.S. Corps of Engineers, is responsible for all irrigation development. Crops using irrigation in Thailand include rice, sugar, citrus, vegetables, beans, and tobacco, among others.

We have consistently held that government activities regarding the construction of roads and irrigation facilities constitute a bounty or grant only when they are limited to a specific enterprise or industry, or group of enterprises or industries. Moreover, we have held that where limitations on use do not result from government activities, but instead result from the inherent characteristics of the good or service being provided, the government action does not confer a countervailable bounty or grant. Basic infrastructure facilities are, by their very nature, available for use only by companies and individuals located in the vicinity of such facilities. Roads, ports, and training centers established in a given location obviously benefit those located in that area more than they benefit firms and individuals located in other areas. Nevertheless, this does not mean that those located in close proximity to the infrastructure are receiving countervailing bounties or grants. The provision of basic infrastructure does not confer a countervailable bounty or grant when the following three conditions are met: (1) The government does not limit who can move into the area where the infrastructure has been built; (2) the infrastructure that has been built is used by more than a specific enterprise or industry, or group thereof; and (3) those that locate there have equal access or receive the benefits of the infrastructure on equal terms.

Inasmuch as roads and irrigation facilities in Thailand are available for use by the agricultural sector as a whole, we preliminarily determine that this program is not countervailable.

III. Programs Determined Not To Be Used

We preliminarily determine that the manufacturers, producers, or exporters in Thailand of rice do not use the following programs which were listed in our notice of initiation.

A. Export Processing Zones

In 1979, Export Processing Zones were authorized through the "Industrial Estates Authority of Thailand Act" (B.E. 2522). According to the responses, none of the companies responding to our questionnaire located in the export processing zones and, thus, none receives benefits under this program.

B. Rediscount of Industrial Bills

The petitioner alleges that producers and exporters of rice receive preferential financing for raw material purchases through a rediscounting of industrial bills. According to the responses, rice millers and growers are not eligible for this program.

C. Incentives for International Trading Firms

The petitioner alleges that the Board of Investment (BOI) grants to qualified international trading companies: (1) Import duty exemptions and the provision of duty drawback schemes; (2) income tax deductions of 200 percent of foreign marketing expenses; and (3) financial support from the Bank of Thailand, including permission to hold foreign-currency accounts.

The government of Thailand responded that between 1978 and 1980, the BOI granted certain incentives to international trading firms pursuant to the Announcement of the BOI No. 40/2521 (1978). This program was terminated on March 11, 1981, pursuant to the Announcement of the BOI No. 1/2524 (1981). As of this effective date, if a trading company had not already been certified, it was not eligible for certification and could not receive benefits. Only two companies that export rice to the United States are eligible to receive benefits under this program. The government of Thailand stated that neither of the two eligible companies received any benefits during the review period.

According to the responses, one company held a Singapore dollar account, but none of the companies under investigation held U.S. dollar accounts during the review period.

D. Export Promotion Fund

The petitioner alleges that producers and exporters of rice receive benefits from the Export Promotion Fund, which is administered by the Department of Commercial Relations, aimed at promoting rice exports. According to the responses, no projects related to rice were financed by the Fund in 1984 and 1985.

E. Electricity Discount for Exporters

The petitioner alleges that electricity authorities in Thailand provide discounts on electricity rates charged to producers of exported products. According to the responses, only industries entitled to participate under the Ministry of Finance regulations in the tax certificate program pursuant to the "Tax and Duty Compensation of Exported Goods Produced in the

Kingdom Act" are eligible for the electricity discount. Since rice producers and exporters are not entitled to participate in the tax certificate program under the aforementioned act, they are ineligible for electricity discounts.

F. Tax Certificates for Exporters

The petitioner alleges that the producers and exporters of rice receive tax certificates based on the value of their exports, which may be used to pay tax liabilities. According to the responses, the primary authority for the rebate of indirect taxes is the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act." Section 12 of the Act states that "goods subject to tax and duty or fees when exported" are not eligible for rebates. Rice is subject to an export tax and an export premium; therefore, the exporters of rice are not eligible to receive these tax certificates.

IV. Program for Which we Need More Information

Paddy Price Raising Project

On October 22, 1985, the Council of Economic Ministers approved a new rice policy for the 1985/1986 crop year (December 1, 1985 through November 30, 1986), the "Paddy Price Raising Project". One aspect of this project is to fix a minimum price to be paid by millers for paddy rice delivered to the mill. Another is the provision of below market rate financing to millers meeting certain stock requirements.

According to the response, rice mills intending to participate in the compensatory financing program were required to register by December 1, 1985. Preliminary figures kept by the government of Thailand show that 978 rice millers have registered to participate. The Government estimates that about 30-40 percent of those registered will actually qualify for financing. As of the date of the response, no benefit has been given out. We will seek further information on how this program works, as well as any benefits received, during verification.

V. Program That Does Not Exist

Exemption of Sales Tax for Promoted Industries

The petitioner alleged that the producers and exporters of rice receive exemptions from sales tax if they qualify for promotion under the Promotion Investment Act. The government of Thailand responded that there is no law providing exemptions from sales for "promoted" industries other than the Investment Promotion Act, which is dealt with in the section of

the notice entitled "Investment Promotion Act."

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of rice from Thailand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register* and to require a 1.60 percent *ad valorem* cash deposit or bond for each such entry of this merchandise.

This suspension will remain in effect until further notice.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. As previously stated, we will not accept for our final determination any statement in the response that cannot be verified.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on March 3, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, pre-hearing briefs and at least 10 copies must be submitted to the Deputy Assistant Secretary by February 24, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with CFR 355.34, within 30 days of the publication of this notice, at the above address in at least 10 copies.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: January 17, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-1708 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DS-M

Importers and Retailers' Textile Advisory Committee Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on February 20, 1986, 2:30 p.m., #6 World Trade Center, Room 718, New York, New York. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements).

General Session: 2:30 p.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 3:00 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part 1982) and listed in 5 U.S.C. 552b(c)(1) and (9).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Helen L. LeGrande, (202) 377-3737.

Dated: January 17, 1986.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-1643 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DR-M

Management-Labor Textile Advisory Committee Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held February 25, 1986 at 1:00 p.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials on problems and conditions in the textile and apparel industry).

General Session: 1:00 p.m. Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

Executive Session: 1:30 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR

Part 1982) and listed in 5 U.S.C. 552b(c)(1) and (9).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Helen L. LeGrande, (202) 377-3737.

Dated: January 17, 1986.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-1644 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DR-M

University of California, Irvine; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-128. Applicant: University of California, Irvine, Irvine, CA 92717. Instrument: NMR-FT Spectrometer, Model SMH 300 with Accessories. Manufacturer: Bruker Instruments, Inc., West Germany. Intended use: See notice at 50 FR 13844.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (January 16, 1984).

Reasons: The foreign instrument provides detailed lineshape analysis and a bandwidth of 2.5 megahertz. The National Institutes of Health advises in its memorandum dated October 22, 1985 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent

scientific value to the foreign instrument being manufactured at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-1642 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Southern California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 83-066R. Applicant: University of Southern California, Los Angeles, CA 90089. Instrument: Excimer Laser, EMG 50E with Extended Gas Lifetime Option Complete with Optics. Original notice of this resubmitted application was published in the Federal Register of December 17, 1982.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (August 27, 1982).

Reasons: The foreign instrument provides low electrical noise operation permitting the measurement of weak signals (in the 20 to 50 microvolt range) from an indium-antimony photovoltaic detector. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to the foreign instrument being manufactured at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-1641 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-549-502]

Antidumping: Circular Welded Carbon Steel Pipes and Tubes From Thailand; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain circular welded carbon steel pipes and tubes from Thailand are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to continue to suspend the liquidation of all entries of certain circular welded carbon steel pipes and tubes from Thailand that are entered, or withdrawn from warehouse, for consumption, on or after October 3, 1985, and to require a cash deposit or bond for each entry in an amount equal to 15.60 percent *ad valorem* for Saha Thai Steel Pipe Company and 15.60 percent for Thai Steel Pipe Industry Company.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT:

John J. Kenkel or Charles Wilson, 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) 377-5404 or (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that certain circular welded carbon steel pipes and tubes from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The weighted-average margins are listed in the "Suspension of Liquidation" section of this notice.

Case History

On February 28, 1985, we received a petition filed in proper form from the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports, and its member companies, on behalf of the U.S. industry producing certain circular welded carbon steel pipes and tubes. 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 Thailand 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 (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on March 20, 1985 (50 FR 12068), and notified the ITC of our action.

On April 15, 1985, the ITC found that there is a reasonable indication that imports of certain circular welded carbon steel pipes and tubes from Thailand are materially injuring, or threatening material injury to, a U.S. industry (U.S. ITC Pub. No. 1680, April 1985).

On July 11, 1985, the petitioners alleged that the respondents' home market sales prices were below cost of production.

On July 16, 1985, the petitioners requested that we postpone the preliminary determination until September 26, 1985. They also alleged that critical circumstances exist. We postponed the preliminary determination on July 18, 1985 (50 FR 30493).

On July 25, 1985, we initiated a cost of production investigation.

We investigated Saha Thai Steel Pipe Company, Ltd., (Saha Thai) and Thai Steel Pipe Industry Company, Ltd., (Thai Steel) the manufacturers who account for all Thai exports of the merchandise to the United States. We examined 100 percent of the sales made by these companies during the period of investigation.

On September 26, 1985, we made an affirmative preliminary determination (50 FR 40427).

We verified the respondents' questionnaire responses on October 10-24, 1985.

We conducted a public hearing on December 5, 1985.

On December 6, 1985, we postponed our final determination until not later than January 16, 1986.

Scope of Investigation

The products under investigation are: certain circular welded carbon steel pipes and tubes, also known as "standard pipe" or "structural tubing," which includes pipe and tube with an outside diameter of 0.375 inch or more but not over 16 inches, or any wall thickness, as currently provided in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925 of the *Tariff*

Schedules of the United States Annotated.

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

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold prior to the date of importation to unrelated purchasers in the United States. We calculated the purchase price based on the FOB or C + I packed price. We made deductions, where appropriate, for foreign inland freight, inland and marine insurance, handling and brokerage charges. We increased the United States price by the amount of import duties imposed by Thailand which had been rebated by reason of the exportation of the merchandise pursuant to section 772(d)(1)(B) of the Act (19 U.S.C. 1677a(d)(1)(B)).

Foreign Market Value

The petitioners alleged that sales in the home market were at prices below the cost of producing the merchandise. We attempted to examine production costs including all appropriate costs for materials, fabrication and general expenses. However, as explained in the verification section of this notice, below, we were unable to verify portions of the respondents' cost of production information. Therefore, for those portions which could not be verified, we calculated the cost of production by using the best information available, which was estimates derived from the respondents' and petitioners' information.

In accordance with section 773(a)(1)(A) of the Act, when there were sufficient sales of such or similar merchandise at or above the cost of production for a particular product group, we calculated foreign market value for Thai Steel based on home market sales, packed, to unrelated purchasers. When there were insufficient sales of such or similar merchandise at or above the cost of production for a particular product group, we used constructed value as the basis for comparison.

When foreign market value was based on home market price, we made comparisons of "such or similar" merchandise groups based on grade, dimension, and end finish selected by

Commerce Department industry experts. Where foreign market value was based on constructed value, we used timely information submitted by Thai Steel when we were able to verify it and, otherwise, best information available for materials, fabrication, general expenses, profit, and packing costs. When appropriate for constructed value, adjustments were made under § 353.15 of the Commerce Regulations for differences in circumstances of sale between the two markets. These adjustments were for differences in credit costs. Since the amount for general expenses was greater than 10 percent of the cost of materials and fabrication, we did not need to adjust it to the statutory minimum of 10 percent. Since the amount for profit was less than eight percent of the cost of materials, fabrication and general expenses, in accordance with statutory requirements, we added eight percent of the sum of the cost of materials, fabrication and general expenses for profit.

In the case of Thai Steel, we found sufficient sales in one product group at or above the cost of production to allow us to use its delivered home market prices to determine foreign market value. From these delivered prices we deducted inland freight costs. We made adjustments for differences in credit costs in accordance with § 353.15 of our Regulations (19 CFR 353.15). Since there were no home market packing costs, we added the packing costs incurred on sales to the United States.

In accordance with current Departmental policy, we also deducted from foreign market value for both respondents a business or sales tax which is levied on domestic sales of pipe and tube at a 5.5 percent rate. Although section 772(d)(1)(C) of the Act calls for adding these taxes to the United States price, this would result in distorting the tax absent an *ad valorem* margin. We are unable to establish what the appropriate tax basis would be for the exported merchandise since it is not subject to the tax. In the absence of knowing what the tax addition to U.S. price should be, we cannot calculate the differential. Therefore, as best information, we are making the adjustment by deducting these taxes from the price of the home market merchandise. Deducting from the home market price is the only tax neutral adjustment for both the *ad valorem* and absolute margin.

In the case of Saha Thai, we found sufficient sales at or above the cost of production for some product groupings, but not for others. For those sales at or

above the cost of production, we used delivered home market prices to determine the foreign market value. From these delivered prices we deducted inland freight costs and trade discounts. We made adjustments for differences in credit costs. We also subtracted home market packing costs and added U.S. packing charges.

For product groupings for which there were insufficient sales at or above the cost of production, we calculated the constructed value by using information submitted by Saha Thai when it was timely and we were able to verify it, and, otherwise, best information available for cost of materials, fabrication, general expenses, profit, and packing costs. Since the amount for general expenses was less than ten percent of the cost of materials and fabrication, we adjusted it to the statutory minimum of ten percent. Since the amount for profit was less than eight percent of the cost of materials, fabrication and general expenses, in accordance with statutory requirements, we added eight percent of the sum of the costs of materials, fabrication and general expenses for profit. Where appropriate for constructed value, adjustments were made under § 353.15 of the Commerce Regulations for differences in credit costs in the two markets.

Negative Determination of Critical Circumstances

The petitioners alleged that imports of pipe and tube from Thailand present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist if we determine that: (1) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of the products under investigation, we ascertain whether there have been any prior investigations of these products in any other country. When Australia investigated these products, it made a negative final determination in February 1985. Neither the Department nor Treasury has investigated these products before. Therefore, we find that there is no history of dumping.

The second criterion is whether the importers knew, or should have known, that the exporter was dumping the merchandise. We normally consider margins of 25 percent or more to constitute constructive knowledge of dumping. Since the margins in this case do not meet or exceed this level, we find that knowledge of dumping cannot be imputed to the importers.

Because we do not have either a history of dumping or knowledge on the part of the importers that the merchandise was being dumped, we, therefore, do not have to consider whether there are massive imports over a relatively short period.

Thus, for the reasons described above, we determine that "critical circumstances" do not exist with respect to pipes and tubes from Thailand.

Verification

In accordance with section 776(a) of the Act, the Department attempted to verify the cost-of-production data of Thai Steel and Saha Thai. However, respondents submitted numerous revisions to the cost-of-production data shortly before the start of and during the on-site verification. In addition, there was a lack of sufficient supporting documentation for certain portions of the respondents' cost-of-production information. Therefore, we determined that portions of the cost of production data submitted by the respondents could not be verified.

Petitioners' Comments

Comment 1. The petitioners allege that critical circumstances exist and that the Department should impute knowledge of dumping to the importers based on prices of pipe imports from countries other than Thailand, price of coil imports and margins lower than 25 percent.

DOC Position. We have found that critical circumstances do not exist. Petitioners' position ignores the many financial complexities and adjustments that are essential in calculating whether merchandise is sold at less than fair value. Only after thorough investigation and verification can such a determination be made under section 773 of the Act. Short-hand formulas for imputing knowledge of dumping such as those suggested by petitioners run the risk of arbitrarily penalizing importers who believe in good faith that their imports are not being dumped.

Comment 2. Petitioners state that the Department should use the best information available since the Department could not examine underlying documentation to test the

accuracy of the summary documents at verification for one company, and the information and methodology changes significantly at the other company.

DOC Position. We agree. The Department used the best information available for those costs presented in the respondents' submission which could not be verified.

Comment 3. Petitioners state that the Department should use coil costs of Thai Steel only for the last three quarters of Thai Steel's 1984-1985 fiscal year instead of the full year.

DOC Position. We agree. The Department used best information to adjust the material costs to reflect the costs of the higher priced coils which were used by the company for the nine months ended March 31, 1985.

Comment 4. Petitioners contend that certain costs for Thai Steel are incorrect, specifically, the scrap rate, production rates and zinc yield.

DOC Position. In determining the steel scrap rate, zinc yield loss and transformation costs to be used for calculating the cost of production, the Department analyzed the respondent's data, which was considered by the Department not to be verified, to determine the reasonableness of the data compared to available U.S. industry data. The Department accepted the company's steel scrap rate but we adjusted the transformation costs and zinc yield loss.

Comment 5. Petitioners contend that the Department may not have included in the cost of production and may not have verified certain items, such as flux, acid for pickling and energy costs.

DOC Position. These costs were included as part of the fabrication costs, and adjusted accordingly. See Comment 4.

Comment 6. The Department should consider the business tax as a cost of manufacturing rather than as a general expense.

DOC Position. We disagree. The business tax was considered a part of the general expenses because it is paid on sales.

Comment 7. The amount of the business tax paid should be calculated by applying 5.5 percent to the price of pipe after deducting the amount of the tax.

DOC Position. We disagree. The business tax is already included in the home market price of the pipe. Therefore, we subtracted the verified amount from the home market price.

Comment 8. Since the foreign market value, pursuant to section 773(a)(1), is the price in the home market at the time of sale of the merchandise within the United States, the Department should

consider only the home market price in the same month as sales to the U.S. Since the only sale to the U.S. occurred in February, 1985, then the Department need look at only February, 1985, home market sales.

DOC Position. We disagree. It is our practice to use foreign market value for the entire period of investigation, unless we are investigating imports from a hyper-inflationary economy or rapidly changing prices. Therefore, we have used all home market sales during the period of investigation.

Comment 9. The petitioners contend that the Department should compare U.S. sales of ASTM-120 pipe to both British Standard medium and heavy pipe sold in the home market because the specification of ASTM 1-120, in terms of wall thickness, is between both British specifications for some sizes and is thicker than the heavy specification for other sizes.

DOC Position. Our Departmental steel industry experts agree. When ASTM-120 pipe wall thickness is closer to British Standard medium, we used that for comparison purposes. Likewise, where the ASTM-120 is closer to British Standard heavy, we used it.

Comment 10. Saha Thai's duty drawback claims cannot be correct, particularly in light of what it pays for coil.

DOC Position. We disagree. We verified the amount that Saha Thai collects for duty drawback and have used that amount.

Comment 11. Petitioners contend that certain costs of Saha Thai do not seem plausible, specifically scrap loss, factory overhead and finishing galvanizing costs.

DOC Position. The Department did not consider the cost of manufacturing presented in the response received by the Department prior to its verification to be verified. Therefore, we adjusted such costs.

Comment 12. Petitioners contend that the business tax should not be included in Saha Thai's production costs if it is paid on sales.

DOC Position. In comparing cost of production to home market sales, we included the business tax in each. We did not include the business tax in constructed value or in the home market sales price, nor in the U.S. sales price when making our fair value comparisons.

Comment 13. Petitioners contend that not all interest expense should be allocated to SG&A expenses. Specifically, interest expenses arising from supplier credits should properly be considered a part of raw material costs.

DOC Position. The Department considers the financing expense of assets, long-term or short-term, to be fungible and, therefore, a general expense of operating the company.

Respondents' Comments

Comment 1. Respondents contend that the Department should not use best information available because they gave the verification team revised data at the outset of the verification and the data were fully verified. Any changes made to the data were insignificant.

DOC Position. The purpose of verification is to assess the accuracy of the response to the Department's questionnaire which is required, in most instances, prior to the preliminary determination. When required, respondents have an obligation to provide the Department with an accurate and complete response prior to the preliminary determination so that the Department has accurate and complete information on which to base its preliminary determination. That obligation is not met where a respondent reconstructs its response after the preliminary determination and presents it to our analysts or accountants shortly before the start of the verification or at the verification site. Indeed, this may render meaningless our preliminary determination. In addition, a thorough on-site verification can be conducted only where the Department has the opportunity: (1) To fully analyze information included in the response, (2) to assess comments submitted by other parties to the proceeding, and (3) to develop questions to pursue at the on-site verification. In cases where initial or supplemental responses to questionnaires are due after the preliminary determination date, they must be submitted in a timely manner to allow for analysis, comments and the development of questions prior to arrival at the verification site. Thus, while correction of minor errors is acceptable during verification, as a general matter we will not accept portions of responses (or entire responses) when they are changed in major respects shortly before the start of the verification or at the verification site because there is insufficient time for analysis and verification.

In this case both respondents prior to and in the course of the verification made significant changes in the cost submissions because the respondents were unable to provide support for their responses and because of the discovery of errors and inconsistencies.

Comment 2. Respondents contend that the Department, if it uses constructed value, should adjust for circumstances of sale.

DOC Position. We agree. See our section, *supra*, on "Foreign Market Value."

Comment 3. Respondents contend that with respect to the outstanding countervailing duty order, the Department should adjust the U.S. price to reflect the amount of the countervailing duty attributable to an export subsidy, instead of adjusting the deposit rate.

DOC Position. We disagree. The statutory prohibition of section 772(d)(1)(D) is on double assessment for the same situation of dumping or export subsidization. Nevertheless, the Departmental practice has been to deduct the amount of the export subsidy from the dumping deposit or bonding requirement when there is a final countervailing duty order in effect on the imported merchandise. It is reasonable not to collect a double deposit when there cannot be double assessment. There has not yet been any assessment of countervailing duties on the shipments referred to by respondents. If there is ultimately such an assessment attributable to export subsidies, assessment of dumping duties for that amount will not be made. In the meantime, we will continue to deduct the amount attributable to the export subsidy from the dumping deposit.

Comment 4. Respondents contend that the Department erred in not correcting a clerical error in the preliminary determination concerning the use of British Standard heavy pipe, when only medium pipe should have been used.

DOC Position. We disagree. The Department's steel industry experts have decided that it is proper to include British Standard heavy pipe for certain product groups in making our comparisons.

Comment 5. Respondents contend that the Department should adjust the business tax by adding it to the U.S. purchase price instead of adjusting the foreign market value.

DOC Position. We disagree. See "Foreign Market Value," *supra*.

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 certain circular welded carbon steel pipes and tubes from Thailand that are entered, or withdrawn from warehouse, for consumption, on or after October 3, 1985. The United States Customs Service shall require a cash deposit or the

posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

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, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. In the final countervailing duty determination on certain circular welded carbon steel pipes and tubes from Thailand, we found export subsidies (50 FR 32751). 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 or bond for that amount. Thus, the amount of the export subsidies will be subtracted for deposit or bonding purposes from the dumping margins.

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Saha Thai Steel Pipe Co	15.69
Thai Steel Pipe Industry Co	15.60
All others	15.67

ITC Notification

In accordance with section 735(c)(1) 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. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after we make our final affirmative determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration,
January 16, 1986.

[FR Doc. 86-1702 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-501]

Antidumping: Oil Country Tubular Goods From Argentina; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that oil country tubular goods (OCTG) from Argentina are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 8, 1986.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769.

Preliminary Determination

We have preliminarily determined that OCTG from Argentina are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act).

We have preliminarily found that the foreign market value of OCTG from Argentina exceeded the United States price on approximately 95 percent of the sales of this product. These margins ranged from 16 percent to 21 percent. The weighted-average margin for all comparisons made was 18.10 percent.

We have preliminarily determined that "critical circumstances" do not exist with respect to oil country tubular goods from Argentina.

Case History

On July 22, 1985, we received a petition from the Lone Star Steel Company (Lone Star) and CF&I Steel Corporation (CF&I) on behalf of the domestic OCTG industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioners allege that imports of OCTG 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 Act, and that these imports are materially injuring, or are threatening material injury to, a United States industry. The petition also alleges 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 an antidumping duty investigation. The petitioners, however, did not provide information sufficient to justify our initiating a cost of production investigation. We notified the ITC of our action and initiated such an investigation on August 12, 1985 (50 FR 33386). On September 11, 1985, the ITC determined that there is reasonable indication that imports to OCTG from Argentina materially injure a U.S. industry (50 FR 37066).

On September 3, 1985, we presented an antidumping duty questionnaire to Dalmine Siderca S.A.I.C. (Dalsid). An extension of time to respond was granted, and on October 31, 1985, we received Dalsid's response to the questionnaire. After receipt of the response, the petitioners again requested that we initiate a cost of production investigation on December 6, 1985. We found that petitioners' allegation contained the elements necessary for use to initiate a cost of production investigation, and did so on December 27, 1985.

On December 5, 1985, the petitioners requested that the Department postpone the preliminary determination until not later than January 21, 1986. The Department granted the request on December 16, 1985. (50 FR 51275). On December 26, 1985, the petitioners alleged that "critical circumstances" exist with respect to imports of OCTG from Argentina.

Scope of Investigation

The merchandise covered by this investigation is OCTG. The term OCTG covers hollow steel products of circular cross section intended for use in drilling of oil or gas. It includes oil well casing, tubing and drill pipe or carbon or alloy steel, whether welded or seamless, to either American Petroleum Institute (API) or non-API specifications (such as proprietary) as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967,

610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

This investigation includes OCTG that are finished and unfinished.

This investigation covers the period from February 1, to July 31, 1985. Dalsid is the only known Argentine producer who exports the subject merchandise to the United States. We examined virtually all sales to the United States made during the period of investigation.

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

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise 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 for Dalsid based on the C.I.F., duty paid, price to unrelated United States purchasers. We made deductions, for port charges, inland freight, brokerage, duties, wharfage, marine insurance and ocean freight costs incurred in delivering the product to the United States.

Foreign Market Value

We determined that there were insufficient sales of OCTG in the home market for purposes of determining foreign market value. Therefore, we looked to third country sales as the basis of comparison. We have based such or similar product groupings on advice from Department of Commerce steel experts. We found that Colombia was the largest third country market to which Dalsid sold such or similar merchandise. For purposes of developing foreign market value for merchandise of which there were no sales of such or similar merchandise to Colombia we used sales to Canada since this was the largest market to which the appropriate merchandise was sold. Petitioners alleged that the sales to third countries were made at prices below the cost of production. We found that all sales of such or similar merchandise to Colombia were at prices at or above the cost of production. Therefore, we calculated foreign market value for that merchandise on the basis of the C.I.F. price with deductions for brokerage, ocean freight, inland freight and insurance. We made an adjustment for differences in credit terms under § 353.15 of our regulations. We deducted

third country packing costs and added packing costs for merchandise sold to the United States. We compared "green shell" which as sold to the United States with the most similar grade and dimensions of OCTG sold to Colombia. We made an adjustment for differences in physical characteristics in accordance with § 353.16 of our regulations.

We found that all of such or similar merchandise sold to Canada was sold at prices below the cost of production over an extended period of time, in substantial quantities, and at prices that did not permit recovery of all cost within a reasonable period of time in the normal course of trade. We examined production costs, including materials, labor and general expenses. Therefore, we disregarded these sales in our analysis in accordance with section 773(b) of the Act since there were insufficient sales at or above cost of production. Instead, we used constructed value to determine foreign market value. In accordance with section 773 of the Act, we calculated constructed value by adding the costs of materials, fabrication, general expenses, and profit. For materials and fabrication we used the producer's actual cost figures. We used the actual general expenses since they exceeded the statutory minimum of ten percent. We used the statutory minimum of eight percent for profit prescribed in section 773(e)(1)(B) of the Act, since actual profit was less than eight percent of the sum of costs and general expenses. We added U.S. packing costs.

In calculating foreign market value, we made currency conversions from Argentine australs to United States dollars in accordance with § 353.56(a)(1) of our regulations using the exchange rates for July 1985.

Verification

In accordance with section 776(a) of the Act, we will verify the information provided by Dalsid by using standard verification procedures, which will include on-site inspection of manufacturer's facilities and examination of relevant sales and financial records of the company.

Preliminary Negative Determination of Critical Circumstances

Petitioners alleged that imports of OCTG from Argentina present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist when the Department finds that (1)(a) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise under investigation or (b) the person by whom,

or for whose account, the merchandise was imported knew or should have known that the exporter was selling merchandise at less than its fair value and (2) there have been massive imports of the merchandise under investigation over a relatively short period.

In preliminarily determining whether there is a history of dumping oil country tubular goods from Argentina in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping orders. Moreover, in the earlier investigation of Argentine OCTG in the U.S., the ITC found no injury (50 FR 21147). We also reviewed the antidumping actions of other countries made available to us through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Although there are antidumping investigations in other countries, none has concluded in a final finding of dumping. Because we found no final determinations on the class or kind of oil country tubular goods which are the subject of this investigation, there is not the requisite history of dumping of the general class or kind of merchandise.

The second criterion is whether the importers knew, or should have known, that the exporter was selling the merchandise at less than fair value. We normally consider margins of 25 percent or more to constitute constructive knowledge of sales at less than fair value. Since the margins in this case do not meet or exceed this level, we find that knowledge of sales at less than fair value cannot be imputed to the importers.

We therefore, do not need to consider whether there have been massive imports over a relatively short period.

For the reasons described above, we preliminarily determine that "critical circumstances" do not exist with respect to OCTG from Argentina.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential 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. The ITC will determine

whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make an affirmative final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of the subject OCTG from Argentina, which are entered, or withdrawn from warehouse, for consumption, on or after the date this notice is published in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margin is as follows:

Manufacturer/Producer/Exporter	Margin
Dalmine Siderca S.A.I.C.	18.10
All other manufacturers, producers and exporters.....	18.10

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(no) 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 the dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in the final affirmative countervailing duty determination on OCTG from Argentina will be subtracted from the dumping margin for deposit or bonding purposes.

Public Comment

In accordance with § 353.47 of Commerce Department Regulations, if requested, we will hold a public hearing at 10 am on March 3, 1986 to afford interested parties an opportunity to comment on this preliminary determination at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, N.W. Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of this notice's publication.

Requests should contain: (1) The party's name, address, and telephone number (2) the number of participants (3) the reason for attending and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by February 24, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46 within 30 days of this notice's publication, at the above address and in at least 10 copies.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

January 21, 1986.

[FR Doc. 86-1703 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-506]

Antidumping; Postponement of Final Duty Determination of Sales at Less Than Fair Value; Oil Country Tubular Goods From Canada

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondents in this investigation that the final determination be postponed until not later than 99 days after the date of publication of the preliminary determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and that we have determined to postpone our final determination as to whether sales of oil country tubular goods (OCTG) from Canada have occurred at less than fair value until not later than April 16, 1986.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Steven Lim, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1776.

SUPPLEMENTARY INFORMATION: On August 19, 1985, we published a notice in the **Federal Register** (50 FR 33387) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of oil country tubular goods from Canada were being, or were likely to be, sold at less than fair value. On August 17, 1985,

the International Trade Commission determined that there is a reasonable indication that imports of OCTG from Canada are materially injuring a U.S. industry. On January 7, 1986, we published a preliminary determination of sales at less than fair value with respect to this merchandise (51 FR 660). The notice stated that if the investigation proceeded normally, we would make our final determination by March 17, 1986.

On January 15, 1986, counsel for Algoma Steel Corporation, Ltd., Sonco Steel Tube, Welded Tube of Canada and Ipsco Steel Inc., respondents in this case, requested that we extend the period for the final determination until not later than 99 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of its preliminary determination, if exporters who account for significant portion of the merchandise which is the subject of the investigation request a postponement after an affirmative preliminary determination.

Algoma, Sonco, Welded Tube and IPSCO are qualified to make such a request since they account for virtually all exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue a final determination in this case not later than April 16, 1986.

The public hearing is also being postponed until 10:00 a.m. on March 5, 1986, at the U.S. Department of Commerce, Room 1851 14th Street and Constitution Avenue, NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by March 3, 1986.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

January 21, 1986.

[FR Doc. 86-1704 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Financial Assistance Application Announcements; Minnesota

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a three (3) year period, subject to available funds and satisfactory performance. The cost of performance for the first 12 months is estimated at \$165,000 for the budget period July 1, 1986, to June 30, 1987. The IBDC will operate in the State of Minnesota. The award number will be 05-10-86010-01.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to American Indian non-profit organizations and for profit firms (those entities which are owned or controlled by one or more American Indian persons).

The IBDC is designed to provide management and technical assistance to eligible American Indian clients for the establishment and operation of businesses. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of American Indian individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of American Indian businesses, individuals, and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance.

The IBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is February 28, 1986.

Applications must be postmarked on or before February 28, 1986.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION:

Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11,800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: January 21, 1986.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 86-1626 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-21-M

National Bureau of Standards

National Bureau of Standards' Visiting Committee; Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Bureau of Standards' Visiting Committee will meet Wednesday, February 19, 1986, from 8:30 a.m. to 4:45 p.m., in Room 1107, Radio Building, National Bureau of Standards, Boulder, Colorado.

The NBS Visiting Committee is composed of five members prominent in the fields of science and technology and appointed by the Secretary of Commerce.

The purpose of the meeting is to review the efficiency of the Bureau's scientific work and the condition of its equipment in order to assist the Committee in reporting to the Secretary of Commerce as required by law.

The public is invited to attend, and the Chairman will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Peggy Webb, Office of the Director, National Bureau of Standards, Gaithersburg, Maryland 20899, telephone (301) 921-2411.

Dated: January 21, 1986.

Ernest Ambler,

Director.

[FR Doc. 86-1613 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

[Modification No. 2 to Permit 377]

Endangered Species; Permit Modification; Lawler, Matusky & Skelly Engineers

Notice is hereby given that pursuant to the provisions of § 222.25 of the regulations governing Endangered Fish or Wildlife (50 CFR Part 222), Scientific Research Permit No. 377 issued to Lawler, Matusky & Skelly Engineers, Pearl River, New York 10965, on May 3, 1982, (47 FR 19730) and modified on January 24, 1984 (49 FR 2928), is further modified as follows:

Section B-8 is deleted and replaced by:

8. This permit is valid with respect to the taking authorized herein until December 31, 1986.

This modification is effective as of January 1, 1986.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to, Parts 217-222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367, November 27, 1974).

The Permit, as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: January 17, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-1650 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 1 to Permit No. 403]

Marine Mammals; Permit Modification; Dr. Bruce R. Mate

Notice is hereby given that pursuant to the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking

and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the regulations governing endangered species permits (50 CFR 222), Scientific Research Permit No. 403, issued to Dr. Bruce R. Mate, Oregon State University, Newport, Oregon 97365, on January 20, 1983 (48 FR 3641) is modified as follows:

Section B.6 is deleted and replaced by:

6. This Permit is valid with respect to the taking authorized herein until December 31, 1987.

This modification became effective on January 1, 1986.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to, Parts 217-222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367) November 27, 1984.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, Washington, D.C.;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115, and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: January 17, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-1648 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Dr. Kenneth S. Norris, Mr. Randall S. Wells, and Dr. William T. Doyle (P20E)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Dr. Kenneth S. Norris, Mr. Randall S. Wells, and Dr. William T. Doyle.

b. Address Institute of Marine Sciences, Long Marine Laboratory, University of California, Santa Cruz, CA 95064.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Pacific white-sided dolphins, *Lagenorhynchus obliquidens*—17,600.

4. Type of Take: The animals will be inadvertently harassed during an observational study of social behavior and ecology of the species. Researchers will obtain audio and video recordings and sample prey species in the area.

5. Location of Activity: Southern California Bight.

6. Period of Activity: 3 Years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: January 17, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-1649 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammals; Application for Permit: Dr. Lanny H. Cornell and Mr. Edward D. Asper (P373)

Notice is hereby given that an Applicant has applied in due form for a Permit to take Marine mammals as authorized by the marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-22).

1. Applicant:

- a. Name Dr. Lanny H. Cornell and Mr. Edward D. Asper
- b. Address 1720 South Shores Road, San Diego, California 92109

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Unspecified number of all species of marine mammals.

4. Type of Take: Specimens will be taken as salvage from dead animals and may be imported and re-exported for scientific purposes.

5. Location of Activity: Worldwide.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the *Federal Register*, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Services.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries,

National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115-0070;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802; and

Director, U.S. Fish and Wildlife Service, Room 611, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: January 17, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

Dated: January 22, 1986.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office

[FR Doc. 86-1720 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-22-M

THE COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts will next meet in open session on Friday, February 21, 1986 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, January 16, 1986.

Charles H. Atherton,

Secretary.

[FR Doc. 86-1671 Filed 1-24-86; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the People's Republic of China

January 22, 1986.

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 January 28, 1986. 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 30, 1985, a notice was published in the *Federal Register* (50 FR 53182) announcing the import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in China and exported to the United States during the agreement year which began on January 1, 1986 and extends through December 31, 1986.

During consultations held under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, the Governments of the United States and the People's Republic of China agreed to establish specific limits for the following products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986: cotton vests in Category 359pt., (only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0648, 384.0652, 384.4300, and 384.4420), cotton sheets in Category 361, cotton luggage in Category 369pt., (only T.S.U.S.A. numbers 706.3200, 706.3650, and 706.4111), and wool dresses in Category 436. The United States Government has decided to control imports in these categories at the agreed limits. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit entry, or withdrawal from warehouse, for consumption in the United States of textile products in the foregoing categories in excess of the designated 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 51175), 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.

January 22, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington,
D.C. 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive of April 30, 1985 which directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of certain cotton textile products, produced or manufactured in China and exported during the twelve-month period which began on May 1, 1985 and extends through April 30, 1986.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended and extended, between the Governments of the United States and People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 28, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in Categories 359pt.,¹ 361, 369pt.,² and 436, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, in excess of the following limits:

Category	12-Month restraint limit ³
359pt. ¹	1,397,250 pounds.
361	3,001,500 numbers.
369 ²	3,885,000 pounds.
436	13,029 dozen.

³ The limits have not been adjusted to account for any imports exported after December 31, 1985.

Textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out this directive textile products in the foregoing categories which have been exported to the United States

during the agreement year which began on January 1, 1985 and extends through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during the twelve-month period. In the event the restraint limits established for such goods during that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of August 19, 1983, as amended, which provide in part, that: (1) Specific limits may be exceeded by not more than 5 percent of their square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one or more other specific limits in that agreement year; (2) except for certain exceptions specified in the agreement, specific limits may be increased for carryover and carryforward up to 10 percent of the applicable category limit in any agreement year, subject to consultations, according to the terms specified in the agreement; and (3) administrative arrangements or adjustments may be made to resolve minor 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. 86-1645 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

January 22, 1986.

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 January 28, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea, the United States Government has decided to convert to specific limits in 1986 the levels for textile products in Categories 310/318 (cotton yarn-dyed fabrics), 342 (women's, girls' and infants' cotton skirts), 350 (cotton dressing gowns), 352 (cotton underwear), 359pt. (cotton headwear in T.S.U.S.A. numbers 702.0600 and 702.1200), 605pt. (yarns of man-made fibers in all T.S.U.S.A. numbers except 316.5500 and 316.5800), 611 (woven fabrics of man-made fibers), and 632 (man-made fiber hosiery), which are exported during 1986. The letter to the Commissioner of Customs which follows this notice controls the new specific 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).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

January 22, 1986.

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 of December 1, 1982, as amended and extended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit,

¹ In Category 359, only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0648, 384.0652, 384.4300, and 384.4420.

² In Category 369, only T.S.U.S.A. numbers 706.3200, 706.3650, and 706.4111.

effective on January 28, 1986, 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 Korea and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, in excess of the indicated limits:

Category	12-mo. restraint limit ¹
310/318	3,818,125 square yards.
342	72,775 dozen.
350	12,527 dozen.
352	133,935 dozen.
359pt. ²	4,253,750 pounds.
605pt. ²	717,500 pounds.
611	2,306,250 square yards.
632	1,716,875 dozen pairs.

¹ The limits have not been adjusted to reflect any imports exported after December 31, 1985.

² In Category 359, only T.S.U.S.A. numbers 702.0600 and 702.1200.

³ In Category 605, all T.S.U.S.A. numbers except 316.5500 and 316.5800.

In carrying out this directive entries of cotton and man-made fiber textile products in the foregoing categories, except Categories 310/318, and 359pt.², produced or manufactured in the Republic of Korea and exported to the United States on and after January 1, 1985 and extending through December 31, 1985, 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 310/318 and 359pt.² which have been exported prior to January 1, 1986 shall not be subject to this directive.

Textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The levels set forth above are subject to adjustment according to the provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, which provide in part, that: (1) During any agreement year specific limits and sublimits may be exceeded by designated percentages, provided a corresponding reduction in square yards equivalent is made in one or more other specific limits; (2) under specified conditions, specific limits and sublimits may be adjusted for carryover and carryforward not to exceed 10 percent; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the foregoing provisions of the agreement 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 in 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. 86-1646 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: 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 rescheduled from January 28, 1986 as follows:

DATE: March 4, 1986, 9:00 a.m. to 5:00 p.m..

ADDRESS: The DIAC, Bolling AFB, D.C.

FOR FURTHER INFORMATION CONTACT: Lt Col Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 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 future initiatives in emergency planning.

Patricia H. Means,

*OSD Federal Register Liaison Officer,
Department of Defense.*

January 21, 1986

[FR Doc. 86-1697 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-01-M

Defense Science Board Task Force on Electronic Warfare; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Electronic Combat will meet in closed session on 10-11 February 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine current electronic warfare technical issues, vulnerabilities of U.S. systems, and the means of countering the effects of these technologies.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C.

552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

*OSD Federal Register Liaison Officer,
Department of Defense.*

January 21, 1986

[FR Doc. 86-1698 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-01-M

Defense Science Board Task Force on Follow-on Forces Attack; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Follow-on Forces Attack will meet in closed session on 6-7 March 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to examine the technical and programmatic aspects as well as conceptual applications of the capabilities and systems to accomplish attacking follow-on forces.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)

(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer,
Department of Defense.

January 21, 1986

[FR Doc. 86-1699 Filed 1-24-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Small ICBMs; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Small ICBMs will meet in closed session on 12 and 24 February 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will receive classified briefings on ICBMs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer,
Department of Defense.

January 21, 1986

[FR Doc. 86-1700 Filed 1-24-86; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (EIS) for the West Bank Mississippi River-Vicinity of New Orleans In Jefferson Parish, LA, Project

AGENCY: U.S. Army Corps of Engineers, DOD, New Orleans District.

ACTION: Notice of Intent to prepare a Draft EIS.

SUMMARY:

1. Proposed Action

The proposed action to be described in this statement is the plan for providing hurricane protection measures (levees, floodwalls, etc.) on the West Bank of the Mississippi River in the vicinity of New Orleans from the

Harvey Canal to the vicinity of Westwego, Louisiana.

2. Alternatives

a. *General.* In response to hurricane protection and related flood control concerns of the West Bank of the Mississippi River in the vicinity of New Orleans, the construction of hurricane protection measures is being proposed. Planning has been undertaken intermittently by the local and Federal government since 1966. As a result of recent hurricanes, particularly Hurricane Juan, extensive damage to property occurred.

b. *Plan 1 (The Crown Point Plan).* This plan would consist of new or enlarged levees along a recently permitted alignment from the Westwego area to near the lower end of the V-shaped levee. From that point a new levee would go nearly due south along the western edge of Crown Point to Bayou Barataria. The road parallel to Bayou Barataria would be raised from the LaRose-Lafitte bridge to the intersection of Bayou Barataria and Bayou des Familles. This plan would also include upgrading of the levee along Bayou Barataria and the Harvey Canal with floodgates installed at Bayou des Familles and Bayou aux Carpes. Elevation of the levees and other protective works would vary. No new development, however, would be allowed under this plan between the V-levee and Bayou Barataria to the south, since the U.S. Environmental Protection Agency has ruled that under section 404(c) of the Clean Water Act fill may not be discharged in this particular area.

c. *Plan 2 (The Permit/V-levee Plan).* This plan would also consist of new or enlarged levees along the recently permitted alignment from the Westwego area to the V-levee north of Crown Point. From that point, it would generally follow the V-levee to the vicinity of the Estelle Pumping Station. It would then continue along the existing Harvey Canal-Bayou Barataria levee.

d. *Plan 3 (The Existing Development Plan).* This plan would consist of new and enlarged levees along the permitted alignment on the west and would follow an alignment that would only protect currently developed areas and tie into and follow the existing Harvey Canal-Bayou Barataria levee. That segment of levee would also be upgraded.

e. *No Action.* The alternative of no action, or future condition without Federal action, will be the basis for comparing any action alternative considered.

3. Scoping Process

a. Public meetings were held in 1966, 1972, and 1984 regarding various proposals for hurricane protection on the West Bank of the Mississippi River. The proposals discussed at the 1966 and 1972 meetings were broad in scope and concerned with protection over a multi-Parish area. The 1984 meeting was concerned with a much smaller area and is generally the same area of impact to be addressed by the upcoming Draft EIS. All affected Federal, state, and local agencies and other interested private organizations and parties are encouraged to participate throughout the EIS process.

b. The most significant issues to be analyzed are project economics and the effects of the project on wetlands and areas of special interest such as the Jean Lafitte National Park and the Bayou aux Carpes Swamp.

c. The U.S. Fish and Wildlife Service will provide a Draft Fish and Wildlife Coordination Act Report for attachment to the statement.

d. A minimum of a 45-day review period for the Draft statement will be allowed for all interested agencies and individuals.

4. Scoping Meeting

A scoping meeting will be scheduled to take place during February 1986 and it will be open to the general public.

5. Availability

The Draft EIS is scheduled to be available to the public in August 1986.

ADDRESS: Questions concerning the proposed action and draft EIS can be directed to Mr. Dave Reece, U.S. Army Corps of Engineers, Environmental Analysis Branch (LMNPD-R), P.O. Box 60267, New Orleans, Louisiana 70160-0267, telephone (504) 862-2522.

Dated: January 14, 1986.

Eugene S. Witherspoon,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 86-1655 Filed 1-24-86; 8:45 am]

BILLING CODE 3710-84-M

Intent To Prepare a Federal Supplement to the Final Environmental Impact Statement; Carrier Battle Group, Puget Sound Region, Ship Homeporting Project

AGENCY: U.S. Army Corps of Engineers, Seattle District, (lead agency), DOD.

ACTION: Regulatory Permit Action; Preparation of a Federal Supplement to

the Final Environmental Impact Statement (Prepared by the U.S. Navy) for the Carrier Battle Group, Puget Sound Region, Ship Homeporting Project.

SUMMARY: Preparation of a National Environmental Policy Act draft Supplement to the Final Environmental Impact Statement (FEIS) for the dredging of East Waterway in Port Gardner with deep water disposal, including the construction of a breakwater, moles, pier, wharf, and dockside facilities. The purpose of the work is to construct a homeport facility for a carrier battle group in Port Gardner, Possession Sound, Puget Sound at Everett, Washington.

1. Description of Actions: The U.S. Navy, Western Division Naval Facilities Engineering Command has applied for a Section 10/404 permit to dredge approximately 2,300,000 cubic yards and excavate 1,000,000 cubic yards by clamshell dredge with open-water confined (capped) disposal by bottom-dump scow at an open-water site near the base of the Snohomish River delta. Forty thousand cubic yards of excavated material (wood refuse) will be deposited on uplands. Approximately 1,280,000 cubic yards of material will be placed in Port Gardner to construct a breakwater and two moles, and for bank protection. A 1,660-foot carrier pier, perimeter wharfs, and one intake and three outfall structures will also be constructed. The applicant has requested 5 years to complete the proposed work.

2. Project Background: A preapplication meeting was held for this project on 8 May 1985. A Final Environmental Impact Statement (FEIS) was published by the U.S. Navy on 14 June 1985. On 27 September 1985, the U.S. Navy submitted an application to the Seattle District for the proposed work. This was the subject of Seattle District Public Notice No. 071-OYB-2-010288 dated 15 October 1985. In light of comments received on the permit application through public and agency coordination (33 CFR Parts 320-330) and a thorough review of the FEIS, the Corps of Engineers determined that preparation of an EIS supplement is necessary to assess significant issues relating to direct and indirect project impacts and alternatives to the project. The City of Everett and the Washington State Department of Ecology are co-lead agencies to prepare an EIS Supplement under the Washington State Environmental Policy Act. To reduce duplication, efforts will be made to combine as much documentation, public

hearings, etc. on these Supplements as possible.

3. Alternatives:

a. The Corps of Engineers has three alternative courses of action available:

(1) The permit could be issued as described in the public notice with standard conditions.

(2) The permit could be issued with standard and special conditions that would mitigate adverse impacts resulting from the proposed action.

(3) The Section 10/404 permit could be denied. A decision to deny the permit could be made with a view toward accomplishing the objective of the proposal at some other location or by a major redesign at the preferred alternative site.

At the present time there is a need for further information on project impacts before the appropriate alternative can be selected.

b. Alternatives to the proposed action considered by the U.S. Navy in their FEIS include: no action, the preferred site (Norton Avenue Terminal site in Everett, Washington), and the use of a different site (Terminal 91 site in Seattle, Washington).

(1) No Action. This alternative would require no further involvement by the Corps of Engineers.

(2) Preferred Alternative Site. Significant issues remain to be addressed, and will be evaluated from additional information being gathered, and from studies already initiated.

(3) Use of a Different Site. Other potential locations were evaluated in the "Carrier Battle Group Northwest Homeporting Site Evaluation Report (1984). Only one alternative site, the Seattle site, was considered in detail in the FEIS. Other reasonable alternative sites (such as Bremerton, Washington, Bangor, Washington, etc.) were not sufficiently addressed in the FEIS. The rationale for why these alternatives are not acceptable needs to be expanded.

4. Significant Issues: Major concerns were raised by resource agencies, Indian Tribes, and the public during the public interest review of the proposed project and permit action. The significant issues to be addressed in the draft supplement to the FEIS include: direct project-related impacts concerned with dredged material disposal, fisheries impact/mitigation, benthic impacts/mitigation, Indian Treaty fishing rights, water quality, and threatened and endangered species. Secondary and cumulative impacts ensuing from the proposed action will also be addressed, such as alterations to fish and wildlife resources, traffic patterns in the city of

Everett, sewage treatment problems, urban expansion, and nuclear hazards.

5. Other Environmental Review and Coordination Requirements: Other environmental review and consultation requirements include preparation of a section 404(b)(1) report by the Corps of Engineers; consultation between the U.S. Navy, the Fish and Wildlife Service, and the National Marine Fisheries Service on threatened and endangered species, per section 7 of the Endangered Species Act; and acquisition by the applicant of a Washington State Water Quality Certification, a National Pollutant Discharge Elimination System (NPDES) permit, and insure consistency to the maximum extent practicable with the Washington State Coastal Zone Management Program.

6. Public Involvement: To assist in determining the scope of issues to be analyzed in depth in the supplement, correspondence will be sent to all affected agencies, affected Indian Tribes, and other interested persons indicating that the supplement is being prepared and inviting any comments regarding its scope not already expressed in responses to the permit application public notice.

7. Draft Supplement to FEIS Availability: The draft supplement to FEIS for this proposed action should be available by summer 1986.

8. Address: Questions and/or comments on this proposed action or the draft supplement to FEIS should be directed to: Mr. Tom Mueller, Regulatory Branch, U.S. Army Corps of Engineers, Seattle District, Post Office Box C-3755, Seattle, Washington 98124, Telephone (206) 764-3495 (FTS 399-3495).

Dated: January 17, 1986.

Rance H. Rountree,

Lt. Colonel, Corps of Engineers, Acting District Engineer.

[FR Doc. 86-1650 Filed 1-23-86; 8:45 am]

BILLING CODE 3710-ER-M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of Closed Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Proposal Review Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is

required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: February 11-14, 1986, 9:00 A.M. until conclusion of business each day.

ADDRESS: U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC 202/732-1887.

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 2000 L Street, NW., Suite 574, Washington, DC 20036 (202/634-6160).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under section 441(a) of the Indian Education Act (Title IV of Pub. L. 92-318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The Proposal Review Committee of the Council will meet in closed session starting at approximately 9:00 a.m., and will end at the conclusion of business each day, approximately 5:00 p.m. The agenda includes reviewing applications submitted under the (1) Indian Controlled Schools authorized by Part A of the Indian Education Act; (2) Planning, Pilot, and Demonstration Projects and Educational Personnel Development (Sections 1005 and 422) authorized by Part B of the Indian Education Act; and (3) Planning, Pilot, and Demonstration Projects for Indian Adults Program and Educational Services for Indian Adults Program authorized by Part C of the Indian Education Act. Under section 442(b)(2) of Part D of the Indian Education Act, the Council is authorized to review applications for assistance submitted under these programs and to make recommendations to the Secretary of Education with respect to their approval.

The reviewing of applications must be held in the highest confidence until the announcement is released by proper authorities as to which projects will be funded. The premature disclosure of information discussed during the review process is likely to significantly frustrate implementation of agency action. Financial information which is privileged or confidential contained in and related to these proposals will be discussed at the review session. In addition, discussion will touch upon matters that would disclose information of a personal nature where disclosure

would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (9), (4), and (6) of section 552b(c) of Title 5 U.S.C.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Dated: January 14, 1986. Signed at Washington, DC.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 86-1685 Filed 1-24-86; 8:45 am]

BILLING CODE 4000-01-M

National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs; Appeals Deadline

AGENCY: Department of Education.

ACTION: Notice of deadline date for submitting appeals for funds; and notice of average program expenditures by type of institution.

SUMMARY: The Secretary gives notice of the deadline date for institutions of higher education wishing to file appeals of their initial allocations of funds (tentative awards) for award year 1986-87 under the National Direct Student Loan (NDSL), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) Programs. Under these programs, the Secretary allocates funds to institutions for students who need financial aid to meet the cost of postsecondary education.

The Secretary also announces the average 1984-85 expenditure of funds per enrolled student for the NDSL, CWS, and SEOG Programs by type of institution. The Secretary uses these average expenditures in calculating the 1986-87 NDSL, CWS, or SEOG award of an institution that is participating in that program for the first or second time.

The NDSL, CWS, and SEOG Programs are authorized by Parts E, C, and Supart A-2, respectively, of title IV of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1087aa-1087ii, 42 U.S.C. 2751-2756b; and 20 U.S.C. 1070b-1070b-3)

Closing date for transmittal of appeals: The deadline date for an institution of higher education to submit an appeal of its 1986-87 tentative NDSL, CWS, or SEOG award is February 28, 1986.

FOR FURTHER INFORMATION CONTACT:

Ms. Gloria Easter, Division of Program Operations, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4621, ROB-3), Washington, DC 20202. Telephone (202) 245-2432.

SUPPLEMENTARY INFORMATION:

An institution that wishes to participate in the NDSL, CWS, or SEOG Program must submit an application for funds to the Secretary before an established closing date. The information the institution provides on the application is evaluated according to the appropriate funding criteria to determine the institutions' appropriate funding level. Each institution is informed of its funding level. However, the regulations for each of these programs permit an institution to appeal its funding level.

Regulations containing the procedures for calculating institutional awards and appeals of those awards are contained in 34 CFR 674.7 for the NDSL program, 34 CFR 675.7 for the CWS program, and 34 CFR 676.7 for the SEOG program.

Average 1984-85 Expenditure of Funds per Enrolled Student by Program and Type of Institution

Listed below are the types of institutions and the average program expenditure per enrolled student for each type of institution. The Secretary uses this information to calculate the 1986-87 award of an institution that is participating in the NDSL, CWS, or SEOG program for the first or second time.

Type of institution	NDSL expenditure	SEOG	CWS Federal share
Cosmetology.....	\$35	\$60	\$8
Business.....	68	60	24
Trade and technical.....	60	40	18
Art.....	87	74	60
Other proprietary.....	67	40	26
Other non-proprietary.....	72	26	38

Appeals Delivered by Mail

An appeal sent by mail must be addressed to Appeals, NDSL/CWS/SEOG, Post Office Box 23914, L'Enfant Plaza, Washington, D.C. 20026.

An institution must show proof of mailing its appeal by the deadline date. Proof of mailing must consist of one of the following:

- (1) A legible receipt with the date of mailing stamped by the U.S. Postal Service.
- (2) A legibly dated U.S. Postal Service postmark.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an appeal is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

An institution is encouraged to use registered or at least first-class mail.

Appeals Delivered by Hand

An appeal that is hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, Division of Program Operations, Campus-Based Programs Branch, Room 4621, Regional Office Building 3, 7th and D Streets, SW., Washington, DC. The Campus-Based Programs Branch will accept hand-delivered appeals between 8:00 a.m. and 4:30 p.m. daily (Eastern Standard Time) except Saturdays, Sundays, and Federal Holidays.

An appeal that is hand-delivered will not be accepted after 4:30 p.m. on February 28, 1986.

Applicable Regulations

The following regulations apply to the campus-based programs:

- 34 CFR Part 668—Student Assistance General Provisions.
- 34 CFR Part 674—National Direct Student Loan Program.
- 34 CFR Part 675—College Work-Study Program.
- 34 CFR Part 676—Supplemental Educational Opportunity Grant Program.

(20 U.S.C. 1087aa-1037ii, 42 U.S.C. 2761-2756b; and 20 U.S.C. 1070b-1070b-3)

(Catalog of Federal Domestic Assistance No. 84.038, National Direct Student Loan Program; 84.033, College Work-Study Program; and 84.007, Supplemental Education Opportunity Grant Program)

Dated: January 22, 1986.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 86-1730 Filed 1-24-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Program Announcement; A Program Opportunity Notice for a Clean Coal Technology Program

AGENCY: Office of Fossil Energy, DOE.

ACTION: A Program Opportunity Notice for a Clean Coal Technology Program.

SUMMARY: The United States Department of Energy (DOE), Office of Fossil Energy (FE), is issuing a Program Opportunity Notice (PON) (Number DE-PS01-86FE60966) in response to Pub. L. 99-190, "A Joint Resolution Making Further Continuing Appropriations for FY 1986, and for Other Purposes." This Joint Resolution among other things, provides funds to conduct clean coal technology projects through cost-shared cooperative agreements for the construction and operation of facilities that would demonstrate the feasibility for future commercial applications of such technology.

Pub. L. 99-190 specifies that the Secretary of Energy shall not finance more than 50 percent of the total costs of a clean coal technology project as estimated by the Secretary of Energy as of the date of award of financial assistance. Further, at least fifty percent cost-sharing by project sponsors will be required in each of the design, construction, and operating phases proposed to be included in a clean coal technology project. Additionally, the PON will contain qualification criteria, and each offeror will need to demonstrate ability to meet these qualification criteria.

There are three objectives of this announcement. First, this announcement is to request written public comment on the draft PON for this program. For those on the DOE mailing list, copies of the draft PON will be mailed on January 30, 1986. Instructions for being placed on the mailing list to receive copies of the draft PON are contained below. In addition, copies can be picked up at DOE Headquarters on or after January 30, 1986.

DOE is requesting input from all interested parties to have the benefit of a broad range of public viewpoints as guidance in developing the final PON. Included in the draft PON will be DOE's proposed strategy for compliance with the National Environmental Policy Act. Oral or written responses to, or acknowledgement by DOE, of public comments received with respect to the draft PON will not be possible due to the limited time available to issue the final PON. The final PON will contain no discussion of the responses received. However, all timely comments received will be considered in finalizing the PON.

Second, this announcement is to serve as notice that the final PON for the Clean Coal Technology program will be mailed no later than February 17, 1986. In addition, a copy can be picked up at DOE Headquarters on or after February

18, 1986. Proposals in response to this PON will be due on April 18, 1986.

Third, this announcement is to give notice that a preproposal conference for the Clean Coal Technology program will be held on March 4, 1986 to enable prospective offerors the opportunity to gain a better understanding of the objectives of this PON and to receive answers in response to written questions submitted regarding the PON.

All persons receiving the draft PON should retain their copies of the draft PON since the issuance of the final PON may be accomplished through substitution of pages, if needed. In order to have a complete PON, offerors may therefore need copies of the draft PON and the substitution pages.

Date of Preproposal Conference: March 4, 1986 at 9 a.m., e.s.t.

Location of Preproposal Conference: U.S. Department of Energy, Germantown Auditorium, 19901 Germantown Road, Route Md. 118, Germantown, Maryland.

Date for Submission of Public Comment on Draft PON: The deadline date for receipt of comments at the address identified below is 3:30 p.m., e.s.t., on February 6, 1986.

Address for Submission of Public Comment on Draft PON: Comments must be submitted in writing to the U.S. Department of Energy, Office of Procurement Operations, Attn: Mr. E. Stephen Logan, MA-452.1, Room 11-065, 1000 Independence Avenue, SW., Washington, DC 20585.

For Copies of the Draft and Final PON: Written requests must be sent to U.S. Department of Energy, P.O. Box 2500, Attn: Document Control Specialist, MA-451.1, Washington, DC 20013. Written requests to be placed on the mailing list for the draft and final PON should be received by January 30, 1986. Also, copies of the draft and final PON may be picked up at the U.S. Department of Energy, Office of Procurement Operations, Forrestal Building, Room 1J-005, 1000 Independence Avenue, SW., Washington, DC between the hours of 9 a.m. and 3 p.m., e.s.t., Monday through Friday, except Federal holidays, on or after January 30, 1986 for the draft PON and on February 18, 1986 for the final PON. Requests for copies of the draft and final PON after February 18, 1986 will be filled only to the extent that copies are available.

For further information contact: Mr. E. Stephen Logan, Tel. (202) 252-1026.

Issued in Washington, D.C., on January 22, 1986.

Berton J. Roth,

Director, Procurement and Assistance,
Management Directorate.

[FR Doc. 86-1725 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Availability of Program for Support of Advanced Coal Research; Pittsburgh Energy Technology Center

AGENCY: Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Availability of program solicitation for support of advanced coal research at U.S. colleges and universities.

SUMMARY: Now available Program Solicitation (PS) DE-PS22-86PC90501 which solicits grant applications from U.S. colleges, universities, and university-affiliated research centers for research and advance concepts related to coal science.

This activity is a part of the Department of Energy's coal research efforts; moreover, the purpose of this overall effort is to improve fundamental scientific and technical understanding of the chemical and physical processes involved in the conversion and utilization of coal.

In order to develop a focused national and regional program of university research on coal science, the Department is particularly interested in innovative, fundamental research pertinent to coal conversion and utilization limited to the following seven topics:

(1) *Coal Science:* Structure and reactivity of coal; physical and chemical characteristics of coal and coal-derived materials; analytical research applicable to coal and coal-derived materials including heavy waxes formed in indirect liquefaction processes; determination of functional groups in coal and coal-derived materials.

(2) *Reaction Chemistry:* Fundamental research directed toward an understanding of organic and inorganic chemistry of coal with respect to conversion and utilization; electrochemical investigation of conversion and utilization reactions; chemical coal cleaning; microbial desulfurization; upgrading of chars produced in conversion and utilization processes; novel reactions for depolymerizing coal; chemical reactions in supercritical fluids.

(3) *Surface Science:* Surface properties of coal pertinent to conversion and utilization; surface enhanced beneficiation; dewatering and

pelletizing of fine coals; stabilization of coal-oil/coal-water slurries; surface properties of catalysts useful in conversion and utilization of coal; catalyst surface transitions under process conditions.

(4) *Advanced Process Concepts:* Improvements in practical homogeneous and heterogeneous chemical reactions for coal pyrolysis, preoxidation, combustion, direct and indirect liquefaction, and surface and underground gasification through novel chemical and/or reactor systems or through advanced mechanism or kinetics studies that provide insight on process concepts.

(5) *Thermodynamics:* Measurement and correlation of thermodynamic and transport properties pertinent to coal conversion and utilization; supercritical phase behavior; phase transformations of coal mineral matter occurring during conversion and utilization.

(6) *Engineering Fundamentals:* Transport phenomena at high temperatures and/or high pressures with or without chemical reactions; transport in 3-phase slurry reactors; formation and transport of aerosols; electrical effects in coal flames.

(7) *Environmental Science:* Chemistry of formation and/or elimination of gaseous and liquid pollutants arising from coal conversion and utilization reactions; sulfur, nitrogen, halide, alkali, and heavy metal chemistry related to gas or liquid cleanup; mechanisms and kinetics of catalytic destruction of nitrogen compounds produced in substoichiometric and stoichiometric coal combustion regime at pressurized and nonpressurized conditions; size and composition of particulates in combustion products as a function of the properties of coal or coal-derived fuel and combustion temperature; collection/removal of particulates from aerosols.

Authority

DOE Organization Act, Pub. L. 95-91 (42 U.S.C. 7101); Federal Non-nuclear Energy Research and Development Act of 1974, Pub. L. 93-577 (42 U.S.C. 5901 *et seq.*); DOE Financial Assistance Regulations, 10 CFR Part 600, Subparts A and C.

Awards

DOE anticipates awarding grants for each project subject to the availability of funds. Approximately \$4.31 million is available for the program solicitation, which should provide support for about 25-30 proposals.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940,

MS 900-33, Pittsburgh, PA, 15236, Attn: Keith R. Miles.

Issued in Pittsburgh, PA on January 14, 1986.

Sun W. Chun,

Director.

[FR Doc. 86-1674 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

[Docket No. CAS-RM-80-304]

Industrial Energy Conservation Program; Change in Deadline for Exempt Corporations and Adequate Reporting Programs

AGENCY: Department of Energy.

ACTION: Notice of change of date.

SUMMARY: Pursuant to 10 CFR 445.36, the Department of Energy (DOE) is announcing a change in the deadline for submissions to DOE of requests by corporations for exemption from direct reporting of energy efficiency progress and of requests by third party sponsors for approval of their alternative reporting programs. The deadline is changed from February 28, 1986, to February 4, 1986.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT:

Charles J. Glaser, Office of Industrial Program, CE-14, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2429

Vivian Lewis, Office of General Counsel, GC-12, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9507.

SUPPLEMENTARY INFORMATION: The Department of Energy hereby gives notice, pursuant to 10 CFR § 445.36, that the deadline for filing requests for exemption from direct reporting of energy efficiency progress under the Industrial Energy Conservation Program and for approval of an alternative adequate reporting program by a third party sponsor is changed from February 28, 1986, to February 4, 1986. The purpose of the earlier date is to facilitate earlier publication of the proposed and final notices of exempt corporations and adequate reporting programs, respectively, than has been the case in previous years.

All reports of energy efficiency progress under the program are due by June 1 annually. Earlier identification of exempt corporations and adequate

reporting programs has been urged by some corporations. As they point out, publication of the final notice before June 1, rather than after that date, would remove any possible uncertainty as to which corporations may report through third party sponsors. It is possible that DOE will take steps to make this change applicable to future years.

As in the past, any corporation which was exempt for the last reporting period (calendar year 1985) and for which all information required is unchanged, need not refile a request at this time. The same is true for an approved sponsor except that the sponsor's chief executive officer or his designee must certify that all items in the previous year request are still true and accurate.

Issued in Washington, D.C., January 17, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-1652 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Intent To Request Office of Management and Budget Approval for CE-189-P, C, and S

AGENCY: Energy Information Administration, Energy.

ACTION: Notice.

SUMMARY: The Department of Energy plans to request clearance from the Office of Management and Budget (OMB) for the continuing use of forms CE-189-P, CE-189-C and CE-189-S. These forms collect plant, corporate, and sponsor data, respectively, for industrial energy efficiency and recovered materials reporting under its Industrial Energy Conservation Program. These forms have remained unchanged since inception, with the most recent Office of Management and Budget approval expiring in March 1986.

FOR FURTHER INFORMATION CONTACT: Charles J. Glaser, Office of Industrial Programs, CE-14 U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252-2429.

SUPPLEMENTARY INFORMATION: Under the provisions of the Energy Policy and Conservation Act (Pub. L. 94-163), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619) certain corporations in major energy consuming industries are required to report data on energy efficiency improvement and recovered materials utilization to the Department of Energy (DOE). The regulations governing the identification of corporations required to

report and establishing the reporting requirements are contained in Title 10 of the Code of Federal Regulations Part 445, entitled "Industrial Energy Conservation Program."

Issued in Washington, DC, January 22, 1986.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 86-1726 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-85-012 OFF Case No. 55118-9276-21,22,23-24]

Powerplant and Industrial Fuel Use; Exemption; General Electric Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting to General Electric Company exemption from prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to General Electric Company (GE or "the petitioner") of Schenectady, New York. The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a planned GE facility located in Baytown, Texas. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATE: The order shall take effect on March 28, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION:

Frank Duchaine, Office of Fuels Programs, Coal and Electricity Division, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-8233

Steve E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-

113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: The COGEBAY cogeneration plant is a cogeneration facility which will be located on land belonging to Mobay Chemical Corporation at its Baytown plant, West Bay Road, Baytown, Texas. The proposed COGEBAY cogeneration plant is a gas turbine, heat recovery steam generator (HRSG) and an extraction condensing steam turbine-generator installation which will supply steam to Mobay at 630 psig/509 °F. It is intended that the electric power from the gas turbine-generators and the condensing steam turbine-generator will be purchased by a Texas electric utility company which is interconnected with the Electric Reliability Council of Texas regional grid.

The cogeneration plant system will consist of three gas turbine-generators, coupled to three supplementary-fired HRSGs and a single automatic extraction/admission condensing steam turbine-generator. The HRSGs are supplementary-fired. The steam turbine is sized to handle the total steam generation with unfired HRSGs at minimum ambient temperature minus the minimum process steam flow required by Mobay. This is necessary to provide an economical cogeneration plant that will also have the required operational flexibility to respond to changing process steam demand. The gas turbines and the condensing steam turbine-generator are connected to electrical generating units which have a design net capacity of 329,320 kilowatts (average life) at 69°F dry bulb ambient and 60°F wet bulb ambient with 2000,000 pph steam to process and supplementary-fired HRSGs.

The purpose of the gas turbine-generators will be to serve as the cogeneration system's prime mover, providing power for the generation of electricity and the source of high temperature exhaust gas which will be assisted by supplemental firing of natural gas in the HRSGs for the sequential production of steam for industrial applications and the steam turbine-generator.

The petitioner proposes to burn natural gas in the combustion gas turbine and HRSGs.

Basis For Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including GE's certification to ERA, in accordance with § 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility

will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the *Federal Register* on June 17, 1985 (50 FR 25118), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on August 1, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that GE has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to Section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to GE to permit the use of natural gas as the primary energy source for its cogeneration facility in Baytown, Texas.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the *Federal Register*.

Issued in Washington, DC, on January 16, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration,

[FR Doc. 86-1651 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Office Of Energy Research

Magnetic Fusion Advisory Committee; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee.

Date and Time: Wednesday, February 19, 1986, 9:00 a.m.—5:00 p.m.; Thursday, February 20, 1986, 9:00 a.m.—5:00 p.m.

Location: Lawrence Livermore National Laboratory, Building 123—Auditorium, 7000 East Avenue, Livermore, CA 94550.

Contact: Richard E. Nygren, Office of Fusion Energy (ER-50.1), U.S. Department of Energy, Mail Stop G-226, Washington, D.C. 20545, Phone: (301)-353-4941.

Purpose of the Committee: To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Agenda Outline

1. FY 1986-87 Fusion Budget and Program Issues—Clarke, Trivelpiece
2. MFAC Discussion
3. Public Discussion
4. International Collaboration in Fusion
 - A. Possible New Initiatives—Clarke, Trivelpiece
 - B. Status of INTOR Studies—Stacey
5. Report of MFAC Panel XIV on Ignition Physics
 - A. Review of Charge—Davidson
 - B. Panel Findings and Recommendations—Meade, et al.
6. MFAC Discussion and Recommendations
7. Public Discussion
8. Status of Technical Planning Activity—Baker, et al.
9. Other Program Issues—MFAC Discussion
10. New Charge Areas
11. MFAC Discussion and Recommendations
12. Public Discussion

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Rosalie Weller at the address or telephone number listed above. Requests must be received five days prior to the meeting

and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 22, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86-1727 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP86-37-000]

Southern Natural Gas Co.; Proposed Tariff Changes

January 17, 1986.

Take notice that Southern Natural Gas Company (Southern) on January 7, 1986, tendered for filing First Revised Sheet No. 468 to its FERC Gas Tariff, Original Volume No. 2, proposed to be effective February 7, 1986. 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 January 13, 1986.

Southern states that this tariff sheet decreases the fuel charge deducted by Southern for gas redelivered at the St. Mary Parish, Louisiana, delivery point from 3.5 percent to 1 percent. The fuel charge deducted for gas redelivered at the Perryville, Ouachita Parish, Louisiana, and Kosciuski, Attala County, Mississippi, delivery points remains at 3.5 percent.

Southern states that this filing is being made in compliance with Part 154 of the Commission's Regulations under the Natural Gas Act.

Southern indicates that copies of the filing have been mailed to United Gas Pipe Line Company.

Any person desiring to be heard or to protest said filings should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE.,

Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 24, 1986. 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 these filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1634 Filed 1-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-437-000, et al.]

Mojave Pipeline Co., et al.; Pipeline Projects To Supply Natural Gas for Enhanced Oil Recovery in California: Notification of Schedule for Public Scoping Meetings on Environmental Issues To Be Addressed in the Environmental Impact Statement

January 24, 1986.

In the matter of Mojave Pipeline Company, CP85-437-000; Kern River Gas Transmission Company, CP85-552-000; Northwest Pipeline Company, CP85-625-000; El Paso Natural Gas Company, CP86-192-000; El Dorado Interstate Transmission Company, CP86-205-000; and Transwestern Pipeline Company, CP86-212-000.

The staff of the Federal Energy Regulatory Commission (FERC) hereby announces the schedule of public scoping meetings to be held jointly with the California State Lands Commission (SLC). The meeting will be conducted to identify the scope and significance of environmental impact associated with three competing proposals to transport natural gas from various sources outside of California to the Bakersfield, California, area for use in enhanced oil recovery (EOR) and related cogeneration projects. The attachment lists the locations, dates, and times of the meetings.

On August 23 and December 10, 1985, the FERC staff issued notices of intent to prepare a draft environmental impact statement and request for comments on its scope for the projects proposed in the dockets listed above (50 FR 34174 and 50941). These notices identified that the SLC is working with the FERC staff to produce a joint environmental impact document and contained brief descriptions of the actions proposed, general location maps, and information on comment procedures. Proposed

locations for public scoping meetings were noted and the public was invited to comment and/or nominate additional locations.

The purpose of this notice is twofold: to announce the schedule of joint public scoping meetings and to alert the public that alternatives to and variations of the routes proposed by the various applicants will be presented and discussed. In particular, Kern River Gas Transmission Company has recently notified the FERC staff that it is studying a route variation which would pass through a portion of the Salt Lake Valley between Bountiful (Davis County) and Elberta (Utah County), Utah. The FERC staff feels that this variation, referred to as the Wasatch Variation, may be of particular interest to the public near Salt Lake City because in contrast to other routes under consideration in northern Utah, the Wasatch Variation would traverse a relatively populated corridor in the northern portion of the Salt Lake Valley. The Wasatch Variation and other routes under evaluation in northern Utah will be identified at the scoping meeting in Heber City, Utah. Other routing alternatives to the various proposals which are under evaluation occur near Las Vegas, Nevada, and Barstow and Bakersfield, California. These route alternatives will be discussed at the respective scoping meetings planned for these locations.

As referenced in the supplemental notice issued December 10, 1985, the public scoping meetings are intended as an opportunity for state and local governments and the general public to provide information and assistance directly to the FERC staff and the SLC in defining the range of environmental issues and concerns that need to be addressed in the impact analysis. As previously stated, Federal agencies with an interest in the proposals have formal channels for input into the analysis and are expected to coordinate their comments through the lead Federal agency outside the public meeting mechanism.

Further information concerning the joint public scoping meetings or about the EOR proposals in general is available from either of the following individuals:

Mr. Robert K. Arvedlund, Room 7102,
Environmental Evaluation Branch,
OPPR, Federal Energy Regulatory
Commission, Washington, DC 20426,
Telephone (202) 357-9043

or

Ms. Mary Griggs, California State Lands
Commission, 1807-13th Street,

Sacramento, CA 95814. Telephone
(916) 322-0354.

Kenneth F. Plumb,

Secretary.

Attachment—Schedule of Joint FERC/SLC Public Scoping Meetings

All meetings will begin promptly at 7 p.m.

Monday, February 10, 1986—Classic
Hotel, 6815 Menaul Avenue NE.,
Albuquerque, NM

Wednesday, February 12, 1986—
Conference Room, U.S. Geological
Survey Building No. 3, 2255 North
Gemini Drive, Flagstaff, AZ

Thursday, February 13, 1986—Barstow
Holiday Inn, 1520 East Main, Barstow,
CA

Friday, February 14, 1986—Beale Library
Auditorium, 1315 Truxtun Avenue,
Bakersfield, CA

Tuesday, February 18, 1986—Wasatch
Middle School Auditorium, 200 East
800 South, Heber City, UT

Wednesday, February 19, 1986—Board
Room of the Clark County School
District Education Center, 2832 East
Flamingo Road, Las Vegas, NV.

[FR Doc. 86-1632 Filed 1-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-240-000, et al.]

Electric Rate and Corporate Regulation Filings; Arizona Public Service Co., et al.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER86-240-000]

January 15, 1986.

Take notice that Arizona Public Service Company ("APS"), on January 10, 1986, tendered for filing proposed changes in the following FPC/FERC Electric Service Rate Schedules:

- 12—Electrical District No. 3
- 13—Electrical District No. 7
- 14—Maricopa County Municipal Water Conservation District No. 1
- 15—Roosevelt Irrigation District
- 16—Buckeye Water Conservation & Drainage District
- 25—North Gila Valley Irrigation District
- 35—Electrical District No. 6
- 39—Yuma Irrigation District
- 50—Citizens Utilities Company
- 52—Papago Tribal Utility Authority
- XX—Papago Tribal Utility Authority, formerly Supplement No. 24 to FERC Rate Schedule No. 52 (a new rate schedule designation is requested)
- 57—Arizona Electric Power Cooperative, Inc.

- 58—Wellton-Mohawk Irrigation & Drainage District
 59—Arizona Power Authority
 65—Colorado River Indian Irrigation Project
 66—San Carlos Indian Irrigation Project
 68—Electrical District No. 1
 74—Town of Wickenburg
 120—Southern California Edison Company.

The proposed two-step rate change would increase Period II projected revenues from jurisdictional sales and service by \$23,278 million for Step I rate increases and an additional \$4,150 million for Step II rate increases based on the estimated 12-month test period ending December 31, 1986, for a total increase of \$27,428,000.

The principal reasons for the proposed changes in the rates are to include in APS' cost-of-service the costs associated with the remainder of Unit One of the Palo Verde Nuclear Generating Station and the costs associated with Unit Two in the test period; and to increase the Electrical/Irrigation Districts, existing operating charge and to separate it into two charges.

Comment date: January 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Company

[Docket No. ER86-241-000]

Take notice that Northern States Power Company (Minnesota) on January 13, 1986, tendered for filing a supplement to certain Northern States Power Company (NSP) municipal transmission service and interconnection and interchange agreements (Supplement).

The Supplement reduces the obligation of the customer to compensate NSP for transmission line losses. The Supplement provides that NSP shall only be furnished power and energy equal to 4.5 percent of the deliveries instead of the 7 percent provided for in the existing agreements.

The three affected customers and the current FERC rate schedule designations of their contracts are as follows:

Customer	Rate schedule FERC No.
Hillsboro.....	414
Marshall.....	403
St. James.....	412

The filing of this Supplement by NSP is a result of the settlement reached between the parties in the FERC Docket No. EL85-14-000. NSP requests a waiver of the 60 Day Notice Requirement and an effective date of November 20, 1985,

for these Supplements. This date provides a convenient point in the meter reading cycle to make this adjustment and reduces the customers' bills at the earliest possible date. NSP also requests any other filing requirements under Section 35.13 or any other applicable section be waived by the Commission.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Portland General Electric Company

[Docket No. ER86-244-000]

January 21, 1986.

Take notice that on January 13, 1985 Portland General Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 46. PGE states that this Rate Schedule has expired by its own terms.

PGE requests an effective date of December 31, 1985.

Notice of the proposed cancellation has been served upon the following parties:

Southern California Edison Company
 Public Utility Commissioner of Oregon.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric Company

[Docket No. ER86-245-000]

January 21, 1986.

Take notice that on January 13, 1986, Portland General Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 48. PGE states that this Rate Schedule has expired by its own terms.

PGE requests an effective date of September 30, 1985.

Notice of the proposed cancellation has been served upon the following parties:

Northern California Power Agency
 Public Utility Commissioner of Oregon.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Electric Company

[Docket No. ER86-246-000]

January 21, 1986.

Take notice that on January 13, 1986, Portland General Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 47. PGE states that this Rate Schedule has expired by its own terms.

PGE requests an effective date of September 30, 1985.

Notice of the proposed cancellation has been served upon the following parties:

The Department of Water Resources,
 State of California
 Public Utility Commissioner of Oregon.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Company

[Docket No. ER86-243-000]

January 21, 1986.

Take notice that on January 13, 1986, Tampa Electric Company (Tampa Electric) tendered for filing an Agreement to Provide Qualifying Facility Transmission Service between Tampa Electric and Royster Company (Royster).

Tampa Electric states that Royster owns and operates a qualifying cogeneration facility located in Tampa Electric's service area. Royster has entered into a contract with Florida Power and Light Company (FPL) for the sale of power produced at Royster's facility to FPL. The Agreement tendered in this docket provides for the transmission of power by Tampa Electric from Royster's facility to points of interconnection between the Tampa Electric and FPL transmission systems.

Tampa Electric proposes an effective date of January 1, 1986, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Royster and the Florida Public Service Commission.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Gulf States Utilities Company

[Docket No. ER84-568-007]

January 21, 1986

Take notice that on December 20, 1985, Gulf States Utilities tendered for filing an amended refund report in the event the Commission did not receive the filing sent on November 22, 1985.

Comment date: January 31, 1986, in accordance with Standard Paragraph H at the end of this notice.

8. New England Power Company

[Docket No. EC86-12-000]

January 21, 1986

The Federal Energy Regulatory Commission (Commission) issues notice that on January 13, 1986, the New England Power Company (NEP) pursuant to section 203 of the Federal Power Act and Part 33 of 18 CFR of the Commission's regulations filed an application for the sale of certain electric facilities to the Town of Shrewsbury, Massachusetts (Shrewsbury).

NEP and Shrewsbury have signed a purchase sale agreement under which NEP will sell to Shrewsbury certain electric facilities including but not limited to 2-Circuit switches with support structures and associated controls, 2-115 kV taps to NEP's 0-141 line including wire, poles and other miscellaneous equipment and hardware and such rights and easements or other acceptable permit or license rights as are reasonably necessary for the maintenance and operation of the facilities all located at the Rolfe Avenue substation in Shrewsbury, Massachusetts.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. PacificCorp doing business as Pacific Power & Light Company

[Docket No. ES86-24-000]

January 21, 1986

Take notice that on January 13, 1986, PacificCorp dba Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order (1) authorizing it to issue and sell, in one or more public offerings or private placements, prior to December 31, 1987, fixed rate debt in aggregate principal amount of not more than \$210,000,000 (or its equivalent amount in, or based upon, foreign currencies determined at the time of issue), (2) authorizing it to enter into one or more currency payment exchanges, and (3) exempting the issuance from competitive bidding pursuant to 18 CFR 34.2(b)(2).

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Power & Light Company

[Docket No. ES86-18-000]

January 21, 1986

Take notice that on January 13, 1986 Pacific Power and Light Company (Pacific) tendered for filing information intended to supplement its filing of December 9, 1985 in the above named docket number. Pacific includes in this filing copies of the certified resolutions of the board of directors approving the issuance of shares and amendments to the Dividend Reinvestment and Stock Purchase Plan, as amended. These certified resolutions should replace the draft copies received January 3, 1986.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. Atlantic City Electric Company

[Docket No. ER86-225-000]

January 15, 1986

Take notice that on January 6, 1986, Atlantic City Electric Company (Atlantic) tendered for filing on behalf of the City of Vineland a Transmission Service Agreement dated July 1, 1985. The purpose of the agreement is to provide for the transmission of energy from the Power Authority of New York to the City. The allocation of energy became effective July 1, 1985.

The parties state that no new facilities will be installed nor will existing facilities be modified in connection with this Agreement. The filing party has requested a waiver of any otherwise applicable Rules and Regulations not already complied with in order to permit this Agreement to become effective July 1, 1985.

Comment date: January 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

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 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 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.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-1631 Filed 1-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-138-000]

Electric Rate Filings; Niagara Mohawk Power Corp.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Ordering Summary Disposition, Denying Request for Consolidation, and Establishing Hearing Procedures

Issued: January 17, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon and Charles A. Trabandt.

On November 4, 1985, as amended on November 21, 1985,¹ Niagara Mohawk Power Corporation (Niagara) tendered for filing a proposed increase in rates to the New York Power Authority (NYPA) for the firm transmission of power to NYPA's large industrial preference customers.² The proposed rates would increase revenues by approximately \$5 million (94.0%) over the current rates, based on the 12-month test period ending March 31, 1987. Niagara requests that its proposed rates become effective on January 20, 1986.³

The proposed rate increase has been filed pursuant to a letter of understanding dated November 2, 1984, between Niagara and NYPA which contained procedures designed to phase-in increases in Niagara's transmission rates up to its current cost levels.

The first step, filed in Docket No. ER85-109-000, increased Niagara's rates by 50% of the difference between the rates then in effect (since 1961) and Niagara's cost of service based on a test year ending March 31, 1986.⁴ The second step, at issue here, increases the rates by an amount equal to 80% of the difference between current rates and Niagara's cost of service based on a test year ending March 31, 1987. A third increase will be filed at a later date to recover the full costs of service for a test year ending March 31, 1988.

Notice of the amended filing was published in the **Federal Register**,⁵ with

¹ Niagara originally filed a proposed \$2.1 million rate increase on November 4, 1985. Subsequently, Niagara filed revised sheets and an amended cost of service to correct errors in the November 4, 1985 filing.

² See Attachment for rate schedule designations.

³ Niagara's proposed effective date falls one day short of the required 60-day notice period.

⁴ See 29 FERC ¶ 61,369 (1984).

⁵ 50 FR 50209 (1985).

comments due on or before December 12, 1985. Timely motions to intervene were filed by NYPA, Niagara Hydropower Industries (Niagara Hydropower), Occidental Chemical Corporation (Occidental), and Olin Corporation (Olin). Niagara Hydropower and NYPA did not raise any specific issues or request any particular Commission action. While Occidental and Olin requested a hearing, stating that their review of the filing was not yet complete, they did not identify any issues which they believe would warrant a hearing.

On January 9, 1986, Niagara Hydropower filed a petition requesting that the Commission consolidate this docket with the proceedings concerning Niagara's first step increase in Docket No. ER85-109-000. An initial decision was issued in that case on December 9, 1985. 33 FERC ¶ 63,002, *reconsideration denied*, 33 FERC ¶ 63,070. Niagara Hydropower contends that the presiding judge in the earlier docket erred in determining that transmission costs should be "rolled-in;" however, Niagara Hydropower did not file exceptions to that initial decision. The intervenor now wishes to introduce evidence in this proceeding supporting a different cost methodology and have the Commission consider this evidence before reaching a decision in either proceeding. Thus, Niagara Hydropower requests that the Commission: (1) Defer action upon the exceptions filed in Docket No. ER85-109-000; (2) set this docket for hearing; (3) consolidate the two proceedings; and (4) issue a final determination with respect to the appropriate costing methodology for transmission service at the conclusion of the consolidated proceeding.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶ the timely, unopposed motions to intervene serve to make NYPA, Niagara Hydropower, Occidental, and Olin parties to this proceeding.

We note that Niagara has failed to properly synchronize the test year interest expense used in its income tax calculation with the long-term interest used in calculating its claimed rate of return. Commission precedent requires the computation of the long-term debt cost component of the interest expense tax deduction as the product of a utility's allocated rate base and the weighted cost of long-term debt used for

rate of return purposes.⁷ Given the revenue impact of this decision, we shall direct Niagara to reflect this determination in its compliance cost-of-service submitted at the conclusion of this proceeding.

Based upon our review of Niagara's filing and the pleadings, we find that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept Niagara's rates for filing and suspend them as they are ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination, indicates that the proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a minimal suspension. Here our examination suggests that the proposed rates may not yield substantially excessive revenues. We shall therefore suspend the rates for one day from sixty days after filing, to become effective on January 22, 1986, subject to refund.

We shall deny Niagara Hydropower's request for consolidation. The primary reason for which the intervenor requests consolidation is its claim that the presiding judge in Docket No. ER85-109-000 erred in adopting the use of a "rolled-in" transmission cost methodology. The appropriate remedy in those circumstances would have been to file an exception to the initial decision in that proceeding. Having chosen not to do so, Niagara Hydropower cannot, in essence, collaterally attack that decision in this docket. Insofar as Niagara Hydropower seeks to raise related issues in this proceeding, we would expect a convincing showing that it is necessary to relitigate such matters. Generally, under such circumstances, Commission precedent requires a showing of changed circumstances.⁸ We shall, however, leave to the presiding judge to determine, in the first instance, whether sufficient reason exists to revisit the issues raised by Niagara Hydropower.

The Commission orders

(A) Summary disposition is hereby ordered with respect to interest synchronization. Niagara shall reflect

the proper synchronization in its compliance cost-of-service filed at the conclusion of these proceedings.

(B) Niagara's submittal is hereby accepted for filing and suspended for one day from sixty days after filing, to become effective, subject to refund, on January 22, 1986.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Niagara's rates.

(D) The Commission staff shall serve top sheets within ten (10) days of the date of this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. Such conference shall be held for purposes of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Niagara Hydropower's petition for consolidation is hereby denied.

(G) Subdocket 000 of Docket No. ER86-138 is hereby terminated. The evidentiary proceeding established herein is designated as Docket No. ER86-138-001.

(H) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,
Secretary.

Niagara Mohawk Power Corporation

Docket No. ER86-138-000

Rate Schedule Designations

Designation	Description
(1) Supplement No. 4 to Rate Schedule FPC No. 19.	Rates for Transmission of Replacement and Expansion Power.

⁷ See *Gulf States Utilities Co.*, 20 FERC ¶ 61,039 (1982); *Public Service Co. of New Mexico*, Opinion No. 133, 17 FERC ¶ 61,123 (1981); *Union Electric Co.*, Opinion No. 94, 12 FERC ¶ 61,239 (1980); *Alabama Power Co.*, Opinion No. 54, 8 FERC ¶ 61,083 (1979).

⁸ See, e.g., *Delmarva Power & Light Co.*, 14 FERC ¶ 63,074 (1981); *Minnesota Power & Light Co.*, Opinion No. 87, 11 FERC ¶ 61,313 (1980); *Central Kansas Power Co.*, 5 FERC ¶ 61,291 (1978).

⁶ 18 CFR 385.214 (1985).

Designation	Description
(2) Supplement No. 3 to Supplement No. 2 to Rate Schedule FPC No. 95 (Supersedes Supplement No. 2 to Supplement No. 2).	Do.

[FR Doc. 86-1633 Filed 1-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-189-000, et al.]

Natural Gas Certificate Filings; Sea Robin Pipeline Co., et al.

Take notice that the following filings have been made with the Commission:

1. Sea Robin Pipeline Company

[Docket No. CP85-189-000]

January 15, 1986.

In Docket No. CP85-189-000, Sea Robin Pipeline Company (Applicant), P.O. Box 1478, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of the Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on December 20, 1984, Applicant filed in Docket No. CP85-189-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport gas for Texas Gas from a point of receipt in Eugene Island Block 273, offshore Louisiana, at an existing subsea tap on Applicant's pipeline in Block 273, for delivery to Columbia Gulf Transmission Company for the account of Texas Gas at the outlet side of Applicant's existing measuring station near Erath, Louisiana. Applicant would transport up to 500 Mcf of natural gas

per day on a firm basis pursuant to a gas transportation agreement dated September 12, 1984. The proposed service, it is said, would provide Texas Gas with a means of transporting an additional supply of natural gas without its having to construct and operate duplicative facilities.

Applicant states that Texas Gas would pay a monthly demand charge as well as commodity charge as provided for on Sheet No. 4-A of Applicant's FERC Gas Tariff, Original Volume No. 1. Applicant states further that Texas Gas would pay a transportation charge for the transportation of liquids and liquefiable hydrocarbons.

Comment date: January 30, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Sea Robin Pipeline Company

[Docket No. CP85-861-000]

January 15, 1986.

In Docket No. CP85-861-000, Sea Robin Pipeline Company (Applicant), P.O. Box 1478, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of the Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on September 5, 1985, Applicant filed in Docket No. CP85-861-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport, on a firm basis, up to 4,500 Mcf of natural gas per day of Texas Gas' gas produced from Eugene Island Blocks 330 and 337, offshore Louisiana.

Applicant states that it would transport such gas for Texas Gas from the existing interconnection of the

facilities of Applicant and Pennzoil Corporation at the outlet side of Texas Gas' metering station located on platform B in Eugene Island Block 330 and would redeliver equivalent volumes to Columbia Gulf Transmission Company for the account of Texas Gas, at the terminus of Applicant's pipeline system near Erath, Louisiana.

Texas Gas, it is said, would pay Applicant a demand charge of \$3.11 and a commodity charge 1.30 per Mcf of gas transported. It is said further that the transportation would continue for a period of five years from the date of initial delivery and yearly thereafter unless terminated by either party.

Comment date: January 30, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP86-249-000]

January 16, 1986.

Take notice that on December 23, 1985, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP86-249-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon in place or salvage certain bare pipe line and for a certificate of public convenience and necessity authorizing the construction and operation of 9.23 miles of three paralleled segments of 16-inch coated steel line as a replacement for the abandoned pipe in Warren County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel indicates that the three lines, installed in 1886, 1899 and 1926 would be salvaged with the exception of 3,000 feet which would be abandon in place. National Fuel also states that it would use existing rights-of-way for the entire project.

National Fuel explains that service to existing customers will not be terminated and estimates the cost of construction to be \$2,596,200. Such funds are expected to be generated internally and/or financed from interim short-term bank loans.

Comment date: February 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-253-000]

January 16, 1986.

Take notice that on December 24, 1985, Northern Natural Gas Company,

Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-253-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by removal twenty-five measuring stations in the states of Kansas, Minnesota, Iowa, South Dakota, Texas, Nebraska and Montana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Nothorn proposes to remove the meters in response to notification by Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), that twenty-five of its small volume end-users have requested removal of the meters. (See appendix for details.)

It is estimated that the cost of removal of the facilities would be \$4,800. It is stated that the proposed abandonments have been requested and consented to by the customers. It is further stated that the proposed abandonments would have no negative impact on Northern's other existing customers.

APPENDIX

End-user	Location
Albright Investment Company	Stevens County, Kansas
Jim Gooch	Do.
Ralph Stoddard	Do.
Logan Sprunger	Haskell County, Kansas
Hiniker Farms Inc.	Blue Earth County, Minnesota
Elaine Lambert	Rice County, Minnesota
Gordon Roscoe	Do.
Russell Oehrlein	Dakota County, Minnesota
Ewald Damgaard	Black Hawk County, Iowa
Godfrey Guldager	Do.
Barbara Csomay	Wright County, Iowa
M.O. Mendell	O'Brien County, Iowa
Orlin Prett	Plymouth County, Iowa
Dale Wester	Cherokee County, Iowa
Inez Clark	Lincoln County, South Dakota
Don M. Anthony, A&D Farms #1	Moore County, Texas
Don M. Anthony, A&D Farms #2	Do.
Arthur L. Stokes	Do.
Robert L. Bauerkemp	Cass County, Nebraska
W-M, Inc	Do.
Ardist Mertes, Dodd/Marguerite	Pawnee County, Nebraska
Virgil Kardell	Wayne County, Nebraska
Dan R. McIntosh	Washington County, Nebraska
Ralston Baptist Church	Douglas County, Nebraska
Stephen C. Boyce	Hill County, Montana

Comment date: February 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Ozark Gas Transmission System

[Docket No. CP86-250-000]

January 16, 1986.

Take notice that on December 24, 1985, Ozark Gas Transmission System (Ozark), First City Center, 1700 Pacific Avenue, Dallas, Texas 75201, filed in Docket No. CP86-250-000 an application pursuant to section 7 of the Natural Gas

Act, section 311 of the Natural Gas Policy Act of 1978, and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity that would authorize Ozark to transport natural gas on behalf of others pursuant to Order No. 436 and for the waiver of § 284.7 of the Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Ozark requests that the Commission waive § 284.7 of its Regulations which requires that any rate filed for service subject to § 284.7 must be a one-part rate that is designed to recover the costs allocated to the service to the extent that the projected units of that service are actually purchased and may not include a demand charge, a minimum bill or any provision that guarantees revenues. Ozark explains that as a project-financed pipeline it has a unique status that was recognized by the Commission in its Opinion No. 125 which specified a rate structure requiring Ozark to recover in its demand charge all costs other than return on and of equity and associated income taxes. It is explained that as part of the projected-financing effort, lenders required that Ozark continue this particular rate structure and that if Ozark were to propose or accept a rate structure other than that set out in Opinion No. 125 Ozark would be in automatic default under its loan agreements. Under these circumstances, Ozark states that it is now precluded from operating as an open-access carrier under Order No. 436 and has therefore requested waiver of § 284.7 of its Regulations.

Comment date: February 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1635 Filed 1-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-391-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc. Chrysler Credit Corp., et al.

Comment date: Thirty days from publication in the *Federal Register*, in accordance with Standard Paragraph E at the end of this notice.
January 16, 1986.

Take notice that the following filings have been made with the Commission.

1. Chrysler Credit Corp.

[Docket No. QF86-391-000]

On December 26, 1985, Chrysler Credit Corp. (Applicant), of 155 the Embarcadero, Suite 202, San Francisco, California 94111 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Contra Costa County, California. The facility will consist of 40 wind turbine generators. The electric power production capacity of the facility will be 8.25 MW.

2. Coal Creek Energy, Inc.—Palisade, Colorado

[Docket No. QF86-475-000]

On January 6, 1986, Coal Creek Energy (Applicant), of 1000 Prospect Hill Road, Windsor, Connecticut 06095, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near Palisade, Mesa County, Colorado. The facility will consist of a fluidized bed boiler, steam turbine generator and related auxiliary equipment. Applicant states that the primary energy source for the facility will be "waste" in the form of bituminous coal refuse. The electric power production capacity of the facility will be 80 megawatts.

3. Cogentrix of Florida, Inc.

[Docket No. QF86-381-000]

On December 23, 1985, Cogentrix of Florida, Inc. (Applicant), of Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Lake Wales, Florida. The facility will consist of three stoker-fired boilers and a condensing/extraction steam turbine generating unit. Extraction steam produced by the facility will be supplied to the Citrus World, Inc. to process citrus fruit to citrus juice. The electric power production capacity of the facility will be 51.7 MW. The primary energy source will be coal. The facility is scheduled to be in service on or about October 1, 1988.

4. Double "C" CoGen, Inc.

[Docket No. QF86-441-000]

On December 31, 1985, Double "C" CoGen, Inc. (Applicant), of P.O. Box 19398, Houston, Texas 77224, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of two combustion turbine generating units with two waste heat recovery steam generators. Steam produced by the

facility will be used by Carrec Oil Associates and Cities Service Oil and Gas Corporation for enhanced oil recovery. The electric power production capacity of the facility will be 47.0 MW. The primary energy source will be natural gas. The installation of the facility will begin in May, 1986.

5. Foster Wheeler Power Systems, Inc.—Mount Carmel Facility

[Docket No. QF86-343-000]

On December 3, 1985, Foster Wheeler Power Systems, Inc., (Applicant) of 110 South Orange Avenue, Livingston, New Jersey 07039, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 1.5 miles northwest of Mount Carmel, Pennsylvania. The facility will consist of two circulating fluidized bed boilers, a steam turbine generator, and related auxiliary equipment. The primary energy source for the facility will be "waste" in the form of anthracite coal culm. The electric power production capacity of the facility will be 40 megawatts.

6. Sierra CoGen, Inc.

[Docket No. QF86-442-000]

On December 31, 1985, Sierra CoGen, Inc. (Applicant), of P.O. Box 19398, Houston, Texas 77224, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of two combustion turbine generating units with two waste heat recovery steam generators. Steam produced by the facility will be used by Cities Service Oil and Gas Corporation for enhanced oil recovery. The electric power production capacity of the facility will be 47.0 MW. The primary energy source will be natural gas. The installation of the facility will begin in May, 1986.

7. Ultrapower Inc.

[Docket No. QF86-373-001]

On December 20, 1985, Ultrapower, Inc. (Applicant) of 16845 Von Karman Avenue, Irvine, California 92714, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant

to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Rocklin, California and consists of steam turbine generators and fluidized-bed combustion boilers. The net electric power production capacity is 25 MW. The primary source of energy is biomass in the form of wood waste.

8. Valley Energy Corporation

[Docket No. QF86-337-000]

On December 2, 1985, Valley Energy Corporation (Applicant) of SR 5249-K, Wasilla, Alaska 99687, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located in Mat-Su Borough, Alaska and consists of a wood waste fired boiler and a condensing steam turbine generator. The electric power production capacity of the facility is 15 MW.

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 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 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. 86-1627 Filed 1-24-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of December 6 Through December 13, 1985

During the Week of December 6 through December 13, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of

Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of

service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such

comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 16, 1986

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 6 through December 13, 1985]

Date	Name and location of applicant	Case No.	Type of Submission
Dec. 9, 1985	Arent, Fox, Kintner, Polthin & Kahn Washington, DC	KFA-0006	Appeal of an information request denial. If granted: The Nov. 27, 1985 freedom of information request denial issued by the Office of Procurement Operations would be rescinded, and Arent, Fox, Kintner, Polthin & Kahn would receive a copy of the Department of Energy Contract No. DE-AC01-84IG00064.
Do	La Jet, Inc. Washington, DC	KDR-0011	Motion for discovery. If granted: Discovery would be granted to La Jet, Inc. in connection with the statement of objections submitted in response to the May 8, 1985 proposed remedial order (Case No. HRO-0297) issued to North American Petroleum Co.
Do	Wadsworth Oil Co., Inc., Tuskegee, AL	KEE-0010	Exception to the reporting requirements. If granted: Wadsworth Oil Co., Inc. would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Dec. 11, 1985	Les Petersen Oil Co., Inc., Tuskegee, AL	KEE-0011	Exception to the reporting requirements. If granted: Les Petersen Oil Co. would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Do	OHR's Fuel, Inc., Wallingford, CT	KEE-0012	Exception to the reporting requirements. If granted: OHR's Fuel, Inc. would not be required to file Form EIA-782B, "Reseller/Retailer Monthly Petroleum Product Sales Report."
Do	Pacific Lighting Energy Systems, Commerce, CA	KFA-0007	Appeal of an information request denial. If granted: The Nov. 13, 1985 freedom of information request denial issued by the office of Policy, Planning and Analysis would be rescinded, and Pacific Lighting Energy Systems would receive access to comments of DOE personnel concerning a draft study relating to the Public Utilities Regulatory Policy Act.
Do	REK-CHEM Manufacturing Corp., Albuquerque, NM	KFA-0008	Appeal of an information request denial. If granted: The Dec. 3, 1985 freedom of information request denial issued by the Office of Classification and Technical Information Division would be rescinded, and REK-CHEM Manufacturing Corp. would receive a copy of the unit price schedule which shows the awarded price of Sandia National Laboratories contract solicitation RFO No. 80-8002.
Dec. 13, 1985	Champlain Oil Co., Inc., South Burlington, VT	DEE-0013	Exception to the reporting requirements. If granted: Champlain Oil Co., Inc. would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Products Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of December 6 through December 13, 1985]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
Dec. 09, 1985	True/Farmland	RF195-9
Do	Vickers/Oklahoma	RQ1-256
Do	Zia/Fleming Co., Inc	RF216-1
Do	Amoco/California	RQ21-249
Do	Perry Gas/California	RQ183-250
Do	Belridge/California	RQ8-251
Do	Charter/California	RQ23-252
Do	National Helium/California	RQ3-253
Do	Coline/California	RQ2-254
Do	Palo Pinto/California	RQ5-255
Do	Palo Pinto/Mississippi	RQ5-257
Dec. 10, 1985	Saber/Mobil Oil Corp.	RF192-13
Do	National Helium/Ohio	RQ3-258
Do	National Helium/Indiana	RQ3-259
Do	National Helium/Missouri	RQ3-260
Do	National Helium/Florida	RQ3-261
Dec. 11, 1985	True/Petrolane, Inc	RF195-10
Do	Zia/Intercontinental Petroleum Corp.	RF216-2
Do	Macmillan/Cool Fuel, Inc	RF217-1
Do	Quaker State/T T Enterprises	RF213-7
Dec. 12, 1985	Saber/Cool Fuel, Inc	RF192-14
Do	Saber/Apex Oil Co.	RF192-15
Do	True/Mobil Oil Corp.	RF195-11

REFUND APPLICATIONS RECEIVED—Continued

[Week of December 6 through December 13, 1985]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
Do	True/Kerr-McGee Corp.	RF195-12
Do	True/T&T Gas Products Co.	RF195-13
Do	Alkek/Adams/Farmers Union Central Exchange, Inc.	RF6-76
Dec. 13, 1985	Eastern/Crofton Country Club	RF215-3
Do	Gulf/Cunningham Butane Gas Co.	RF40-3082
Do	True/Tesoro Petroleum Corp.	RF195-14
Do	Eastern/Robert F. Supco	RF215-4
Do	Gulf/Willie's Quail Gulf Service	RF40-3083
Do	True/V-1 Oil Co.	RF195-15
Do	Alkek/Adams/Farmers Petroleum Cooperative, Inc., et al.	RF6-77

[FR Doc. 86-1675 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of December 20 Through December 27, 1985

During the Week of December 20 through December 27, 1985, the

applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 16, 1986.

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 20 through December 27, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 20, 1985	J.R. Cone, Washington, DC	KCX-0007	Supplemental order remand. If granted: The Mar. 25, 1983 remedial order (Case No. DRO-0247) issued to J.R. Cone by the Office of Hearings and Appeals would be modified in accordance with the Oct. 31, 1985 order issued by the Federal Energy Regulatory Commission.
Dec. 23, 1985	Economic Regulatory Administration, Washington, DC	KRR-0001	Request for modification/rescission. If granted: The Nov. 14, 1985 decision and order issued to Marathon Oil Co. and Growmark, Inc. would be modified regarding the ERA's motions for discovery and evidentiary hearing (Case Nos. HRD-0053 and HRH-0024).
Dec. 24, 1985	do	KRZ-0014	Interlocutory. If granted: The proposed remedial order issued to Telum, Inc. (Case No. BRO-1244) on May 28, 1980, would be amended to change the characterization of Telum's first sale for purposes of applying the new item/new market rule at 10 CFR 212.111(b) and to increase the level of alleged overcharges.
Do	Growmark, Inc., Washington, DC	KRR-0002	Request for modification/rescission. If granted: The Nov. 14, 1985 decision and order issued to Marathon Oil Co. and Growmark, Inc. would be modified regarding Growmark's motions for discovery (Case Nos. HRD-0036 and HRD-0044).
Do	Telum, Inc., Washington, DC	KRZ-0015	Interlocutory. If granted: The proposed remedial order issued to Telum, Inc. (Case No. BRO-1244) on May 28, 1980 would be dismissed with prejudice.
Dec. 26, 1985	Economic Regulatory Administration, Washington, DC	KRR-0003	Request for modification/rescission. If granted: The Dec. 10, 1985 remedial order (Case No. HRO-0161) issued to Oil-Tex Petroleum and David F. Myers would be modified, and the firm's crude oil sales to American Petrofina would be found to be layering transactions in violation of 10 CFR 212.186.

REFUND APPLICATIONS RECEIVED

[Week of December 20 to December 27, 1985]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
Dec. 23, 1985	Lowe/Jones Texaco	RF206-4
Dec. 24, 1985	City Service/Hilltop Exxon	RF219-2
Do	Boswell/Koppers Company, Inc.	RF179-13
Dec. 26, 1985	Leese/Defense Logistics Agency	RF211-7
Do	OKC/Sooner Petroleum Corp.	RF13-40
Dec. 24, 1985	Conoco/Gramco, Ltd.	RF220-1
Dec. 26, 1985	LARCO/B&B Oil Co.	RF112-186
Do	LARCO/K.Q. Oil	RF112-185
Dec. 27, 1985	Gulf/B.F. Goodrich Chemical Group	RF40-3088
Do	do	RF40-3087
Do	Eastern/Dawson's American	RF215-5

[FR Doc. 86-1676 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.**ACTION:** Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed the refunding a total of \$1,053,503.10, plus interest, in consent order funds to the public. This money is being held in escrow following the settlement of three enforcement proceedings involving Gull Industries, Inc. of Seattle, Washington (Case Nos. HEF-0084, HEF-0085, and HEF-0086).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and

should be addressed to the Gull Industries Consent Order Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case Nos. HEF-0084 et al.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to two consent orders and a letter of agreement entered into by Gull Industries, Inc. of Seattle, Washington, and the Department of Energy which settled possible regulatory violations in the firm's sales of motor gasoline and middle distillates during the consent order periods. The case numbers, consent order periods, and consent order amounts are set forth below:

Case No.	Consent order period	Escrow amount
HEF-0084	May 3, 1975-June 30, 1977; Feb. 1, 1974-Sept. 30, 1974.	\$52,342.00
HEF-0085	Aug. 19, 1973-June 9, 1977	873,880.54
HEF-0086	Nov. 1, 1973-May 3, 1975	127,280.56

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the escrow accounts funded by Gull; pursuant to the consent orders and letter of agreement. The DOE has tentatively

established procedures under which purchasers of Gull motor gasoline or middle distillates during the applicable periods may file claims for refunds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: January 16, 1986.

George B. Breznay,
Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Gull Industries, Inc.
Date of Filing: October 13, 1983.
Case Numbers: HEF-0084, HEF-0085, HEF-0086.
January 16, 1986

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to

distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. See 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who were likely injured by alleged or adjudicated overcharges or to ascertain readily the extent of such persons' injuries. For a more detailed discussion of Subpart V, see *Office of Enforcement*, 9 DOE ¶ 82,553 at 88,284 (1982), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with three consent orders entered into with Gull Industries, Inc. (Gull) of Seattle, Washington. Gull sells motor gasoline and middle distillates in the States of Idaho, Oregon and Washington. It sells those products to other petroleum marketers (resellers), in bulk sales to end-users, and to retail stations which were either Gull-owned and operated by commission agents ("commission" accounts) or Gull-owned but leased to independent operators ("consignment" accounts).¹ Gull was therefore a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31. ERA audits of the firm's operations revealed possible violations of the Mandatory Petroleum Price Regulations. In order to settle all claims and disputes between Gull and the DOE regarding the firm's compliance with the DOE price and allocation regulations during the audit periods involved, the firm entered into three consent orders with the DOE. The consent orders were signed on April 7, 1978 (Case No. HEF-0086), September 1, 1981 (Case No. HEF-0084), and January 15, 1982 (Case No. HEF-0085). The consent orders refer to the ERA's allegations of overcharges, but note that no formal findings of violation were made. Additionally, the consent orders state that Gull does not admit that it committed any such violations. The case numbers and applicable consent order information are set forth below:

Case No.	Consent order periods ²	Consent order amounts ³
Apr. 7, 1978 consent order: HEF-0086	Nov. 1, 1973 to May 3, 1975.	* \$127,280.56
Sept. 1, 1981 consent order: HEF-0084	Feb. 1, 1974 to Sept. 30, 1974, May 3, 1975 to June 30, 1977.	52,342
Jan. 15, 1982 consent order: HEF-0085	Aug. 19, 1973 to June 9, 1977.	* \$73,880.54

² The consent order periods for middle distillates in HEF-0084 and HEF-0085 terminated with the decontrol of those products on June 30, 1976.

³ These amounts represent the portions of the the Gull consent order funds subject to the ERA's October 13, 1983 Subpart V Petition.

* In executing the April 7, 1978 consent order, Gull agreed to refund:

(i) \$198,092.28 to the marketplace through price rollbacks at its commission account stations;

(ii) \$169,121.67 to its wholesale accounts, i.e., reseller and bulk purchase end-user customers; and

(iii) \$165,942.12 to its "consignment" accounts, i.e., independent operators who leased Gull-owned stations.

As of August 31, 1978 Gull has completed its rollback obligation at its commission account stations (category (i) above). According to the terms of the consent order, Gull was to refund directly any alleged overcharges of \$1,000 or less to its wholesale accounts (category (ii) above), except for one of those customers, Seaside Ready Mix who was to receive \$2,868.53. In order to accomplish refunds to its other wholesale accounts and to its "consignment" accounts (category (iii) above), Gull was required to deposit the remainder of its refund obligation in an interest bearing escrow account. From this account, Gull paid refunds, subject to DOE approval, to its "consignment" accounts and its wholesale accounts that had not received direct refunds. Gull was also permitted to offset its "consignment" account refund obligations by price reductions, as approved by the DOE. Consent Order ¶ 7. By April 10, 1981, Gull had completed its refund obligations to all but 26 of its customers (12 wholesale accounts and 14 "consignment" accounts). The refund amounts attributable to these customers were deposited with the DOE. The consent order amount in Case No. HEF-0086 represents \$100,859.42 in residual funds which were not distributed to "consignment" accounts and \$26,421.14 which was deposited with DOE as part of Gull's restitution for alleged violations in wholesale sales. (The ERA records indicate that a total of \$74,041.23 was supposed to be deposited with the DOE for the alleged wholesale violations but \$47,620.09 of that amount was erroneously deposited by the ERA in the U.S. Treasury as miscellaneous receipts. As a result only \$26,421.14 is currently available for wholesale distribution. This Office has directed the DOE Office of Departmental Accounting to notify the Treasury of the erroneous deposits and to see that the \$47,620.09 is remitted to the correct Gull escrow account. See December 31, 1985 Memorandum to George Burkett, Office of Departmental Accounting from Richard Dugan, OHA. Those funds will increase refund pool to \$74,041.23.)

⁴ Case No. HEF-0085 actually pertains to a letter of agreement (hereinafter referred to in this Proposed Decision as a consent order) between the DOE and Gull. The consent order involves Gull's sales of Texaco Inc. (Texaco) petroleum products during the period August 19, 1973 through June 9, 1977, and sets forth the terms for distribution by Gull of funds it received from Texaco pursuant to a consent order executed by the DOE and Texaco on April 25, 1978. The letter of agreement required that Texaco's refund to Gull totaling \$3,087,770.72, plus interest, be distributed in the following manner:

(i) \$156,180.31, plus interest, to be refunded by Gull directly to identified customers to whom it had passed through Texaco overcharges;

(ii) \$2,100,694.26, plus interest, to be retained by Gull, to compensate it for Texaco overcharges that Gull did not pass through to its customers; and

(iii) \$830,896.15, plus interest, to be paid to the DOE for disbursement to Gull customers unidentified in the audit. See January 15, 1982 Letter of Agreement ¶ 5a-c.

The consent order amount in this case represents the \$830,896.15 principal and \$42,984.39 interest which accrued prior to Gull's payment to the DOE.

This Proposed Decision and Order concerns the distribution of the three separate consent order funds, plus interest which has accrued on those funds since they were remitted to the DOE.

II. Jurisdiction

As stated earlier, the Subpart V procedural regulations of the DOE set forth general guidelines by which the

OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to utilize the Subpart V process to distribute such funds where appropriate. We have considered the ERA's petition to implement Subpart V proceedings with respect to the three Gull consent orders and have determined that such proceedings are appropriate in this case. We therefore propose to accept jurisdiction over the funds received by the DOE pursuant to the three Gull consent orders.

III. Proposed Refund Procedures

We expect that claimants in each of the three proceedings will fall into one of two general categories: (i) Resellers and retailers (hereinafter collectively referred to as resellers) who resold Gull petroleum products or (ii) individuals or firms that consumed Gull petroleum products for their own use (end-users).

A. Showing of Injury

As in prior refund proceedings, we propose to require claimants who were resellers of refined petroleum products purchased from Gull to demonstrate that during the applicable consent order period they would have maintained their prices for the petroleum products at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that, at the time it purchased the product from Gull, market conditions would not permit it to increase its prices to pass through to its customers the additional costs associated with the alleged overcharges. See *OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In addition, the reseller is generally required to show that it had a "bank" of unrecovered costs in order to demonstrate that it did not recover the increased costs associated with the alleged overcharges by increasing its own prices. The maintenance of a bank does not, however, automatically establish injury. See *Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

B. Small Claims Presumption

In these proceedings, we propose to adopt a small claims presumption of injury which has been used in many previous special refund cases. We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of Gull petroleum products. For

¹ The term "consignment" accounts, as used by Gull, does not refer to the type of operations the DOE has traditionally called "consignees" in other situations. See, e.g., Ruling 1975-8, 2 Fed. Energy Guidelines ¶ 16,048, and *Texas Oil Marketers Association*, 7 DOE ¶ 81,066 at 82,702 (1980); *Gulf Oil Corp./C.R. Hill Co.*, Case No. RF40-1004 (September 11, 1985) (Proposed Decision). In its business operations, Gull used the term "commission" accounts to refer to those entities that we have traditionally called "consignees."

example, such firms may have limited accounting and data-retrieval capabilities and therefore may be unable to produce the records necessary to prove the existence of banks of unrecovered costs, or that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past we have adopted a small claims presumption to assure that the costs of filing and processing a refund application do not exceed the benefits. See, e.g., *Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). We propose to adopt such a procedure in this case. Therefore, we propose that any reseller claiming a refund of \$5,000 or less need only document its purchase volumes rather than make a detailed showing of injury in order to be eligible to receive a refund.

C. End-users

As in many other refund proceedings, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges covered by the consent orders. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. See, e.g., *Marion*; *Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984). For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. See *Office of Enforcement*, 10 DOE ¶ 85,072 (1983); see also *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) and cases cited therein. We therefore propose that end-users of Gull petroleum products need only document their purchase volumes to make a sufficient showing that they were injured by the alleged overcharges.

D. Spot Purchasers

We also propose to adopt a rebuttable presumption that firms which made only spot purchases of Gull petroleum products have suffered no injury. Spot purchasers tend to have considerable discretion in where and when to make purchases and therefore would not have made spot purchases of Gull's product at increased prices unless they were able to pass through the full amount of

the alleged overcharges to their own customers. See *Vickers*, 8 DOE at 85,396-97. Accordingly, in order to overcome the rebuttable presumption that it was not injured, a spot purchaser should submit evidence to establish that it was unable to recover the prices it paid for Gull petroleum products and that it did not have discretion as to where and when to make the purchase(s) upon which the refund claim is based.

E. Commission Accounts

With respect to each consent order fund, we propose that Gull's commission accounts be ineligible to receive refunds. In previous Decisions, we have adopted the rebuttable presumption that these types of agents (see n.1) which sold a consent order firm's products were not injured as a result of their contractual arrangement. See, e.g., *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982) (*Amoco*). In that Decision, we pointed out that "consignee agents established their prices at a set, per gallon commission fee that was added to Amoco's wholesale price. That type of arrangement insured that a consignee did not absorb any alleged overcharges." *Id.* See also *Tenneco Oil Co./Kellermeyer, Inc.*, 10 DOE ¶ 85,092 (1983). We therefore decided to adopt a presumption that Amoco consignees generally experienced no injury as a result of their purchases from Amoco. However, we also determined that these types of agents could rebut this presumption by establishing that, "their sales volumes, and their corresponding commission revenues, declined due to the alleged uncompetitiveness of Amoco's prices." *Amoco* at 88,200. See also *Aztex Energy Co.*, 12 DOE ¶ 85,116 at 88,358-59 n.2, (1984); cf. *Gulf Oil Corp./C.R. Hill Oil Co.*, Case No. RF40-1004 (September 11, 1985) (Proposed Decision) (generalized arguments to rebut presumption rejected). We propose to adopt the same presumption here. Gull's commission accounts (which operate as consignees) will therefore be required to rebut the presumption of non-injury in order to receive a refund.⁶

F. \$15 Minimum

We also propose to establish a minimum amount of \$15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than

\$15 outweighs the benefits of restitution in those situations. See *Urban Oil Co.*, 9 DOE ¶ 82,541 (1982); see also 10 CFR 205.286(b).

IV. Eligible Claimants and Refund Amounts

A. Case No. HEF-0086 (April 7, 1978 Consent Order)

The April 7, 1978 consent order covers Gull's sales of motor gasoline and middle distillates during the period November 1, 1973 through May 3, 1975. According to the consent order, the alleged overcharges occurred in specified transactions during the consent order period. Consent Order ¶¶ 3, 4 and 5.⁷ The audit files pertaining to this consent order contain very specific data concerning the customers and alleged overcharges involved in the transactions covered by the April 7, 1978 consent order. We therefore believe it is appropriate to use the ERA audit files to determine the manner in which refunds should be distributed. See *Marion*. In relying on the information in the ERA files, we note that the ERA audit of the Gull transactions covered by the April 7, 1978 consent order had been substantially completed, that a Notice of Probable Violation had been drafted but not issued, and that the allegedly overcharged parties and amounts were clearly identified in the appendices attached to the consent order and the subsequent records kept to monitor Gull's progress in issuing refunds.

Therefore we propose that the April 7, 1978 consent order fund be distributed only to the 26 Gull "consignment" and wholesale account customers who have not already received their designated refund amount. As indicated earlier, the ERA audit files reveal that, pursuant to the 1978 consent order, Gull completed refunds to retail customers at all of its commission account stations and to a portion of its wholesale and "consignment" accounts. See n.4. We believe that the wholesale and "consignment" accounts. See n.4. We believe that the wholesale and "consignment" accounts with remaining refund balances should receive further restitution for Gull's alleged overcharges. We therefore propose to limit eligibility for refunds from the April 7, 1978 consent order to those firms listed in Appendices A-1 and A-2 who satisfactorily demonstrate that they

⁶ The audit files indicate that some Gull commission accounts also had independent reseller operations during a portion of the consent order period. These customers will be eligible to apply for refunds for the purchases made in connection with those operations.

⁷ The alleged overcharges resulted from, *inter alia*, Gull's erroneous base period and maximum lawful selling price computations based on the firm's failure to take into account certain May 15 1973 transactions and to place spot purchasers into the appropriate class of purchaser.

were injured by Gull's alleged regulatory violations in sales of motor gasoline and middle distillates during the period covered by that consent order. Those firms that received their total designated refunds are listed in Appendix A-3 to this Proposed Decision and Order. We propose that since those firms have received restitution they be ineligible for any refunds in Case No. HEF-0086.⁹

In order to allocate the consent order fund in a manner which will correspond to the injuries experienced, we propose to use the information provided in the April 7, 1978 consent order and the reports which Gull prepared in accordance with ¶ 12 of the consent order. These reports show for each customer listed in Appendices A-1 and A-2, the alleged overcharge amounts plus interest, the amounts voluntarily refunded by Gull prior to the consent order, and amounts refunded, during the period from the signing of the consent order to Gull's remittance of funds to the DOE. The DOE used these reports to monitor Gull's refunds to identified customers. In the absence of any later documentation of additional payments or price rollbacks by Gull to its "consignment" and wholesale account customers, we presume that the balances remaining as stated in the ERA audit files are accurate. We therefore propose to use these records to determine the firms' potential refunds. See *Harris Enterprises, Inc.*, 13 DOE ¶ 85.179 (1985).

We propose that the maximum refunds for the firms listed in Appendices A-1 and A-2 who make the requisite showing of injury be equivalent to the balance outstanding on the refund amounts designated for them in the 1978 consent order, plus interest which accrued prior to the remittance of the funds to the DOE. These refund amounts are also set forth in Appendices A-1 and A-2.⁹ In addition, all eligible claimants will be entitled to a proportionate share of the interest which has accrued since the funds were remitted to the DOE.

B. Case No. HEF-0084 (September 1, 1981 Consent Order)

The September 1, 1981 consent order primarily covers Gull's sales of motor gasoline and middle distillates during

⁹ Any wholesale or "consignment" account listed in Appendix A-3 that demonstrates that it did not receive the refund to which it was entitled pursuant to the April 7, 1978 consent order will be eligible to apply for a refund.

⁹ As indicated in fn.4, a portion of the refund amount designated for wholesaler customers was erroneously deposited in the miscellaneous receipts account of the Treasury. The wholesale customers refund amounts listed in Appendix A-2 will be proportionately increased when the misdirected funds are retrieved.

the period May 3, 1975 through June 30, 1977.¹⁰ From the ERA audit materials, it is clear that the audit upon which this consent order is based was essentially a continuation of the audit which led to the April 7, 1978 consent order. In negotiating the April 7, 1978 consent order (which covered the period November 1, 1973 through May 3, 1975), the DOE and Gull agreed that Gull would review its records for the period May 3, 1975 through June 30, 1977 to determine what, if any, additional violations might have occurred in Gull's sales of motor gasoline and middle distillates. This self-audit resulted in the finding of additional alleged overcharges. See November 9, 1981 DOE Narrative Summary of Gull Audits, prepared by Region X Office of Enforcement. The audit file states that the September 1, 1981 consent order was "a follow-on to Case No. (HEF-0086) and covered overcharges from May 1975 through June 1977. . . ." See November 9, 1981 Memorandum from Lyle N. Nelson, Region X Office of Enforcement to Judy Hall, ERA Refund Coordinator. The 1981 consent order also states that it covers Gull's sales of "specified products" in "specified transactions." 1981 Consent Order ¶ 4. It is therefore clear that these "specified transactions" are similar to those enumerated in the 1978 consent order.

In light of this information, we believe that it is highly likely that the parties who were injured by the alleged overcharges settled in the September 1, 1981 consent order closely correspond to the customers allegedly overcharged in transactions covered by the April 7, 1978 consent order. We therefore propose that the September 1, 1981 consent order fund be distributed to the Gull wholesale and "consignment" account customers listed in the appendices to the April 7, 1978 consent order who (i) establish that they were customers after May 3, 1975 and (ii) satisfactorily demonstrate that they were injured by alleged violations that were settled by the 1981 consent order. The firms who we expect will be eligible are listed in Appendix B to this Proposed Decision. While most of these firms received direct refunds under the April 7, 1978 consent order and are therefore ineligible for a refund in the proceeding involving that consent order (Case No. HEF-0086), they have not received refunds pursuant to the September 1, 1981 consent order.

We believe that it is also appropriate to use audit information from the 1978

¹⁰ The consent order also covers alleged credit card sales violations from February 1, 1974 through September 31, 1974.

consent order proceeding to allocate refunds in the 1981 consent order proceeding. As mentioned earlier, the appendices to the 1978 consent order specify the dollar amounts by which each identified customer was allegedly overcharged by Gull. Using these figures, we propose to calculate for each wholesale and consignment account a percentage of the total overcharges alleged in the 1978 consent order. For each firm we will then multiply this alleged overcharge percentage by the 1981 consent order amount of \$52,342 to determine the firm's pro rata share of this settlement fund. A successful applicant will also receive a pro rata share of the interest which has accrued on the fund since its remittance to the DOE. If this pro rata methodology is used to allocate refunds, each claimant's potential refund will fall below the \$5,000 threshold. Thus no claimant will need to make a detailed demonstration of injury in this proceeding.¹¹

C. Case No. HEF-0085 (January 15, 1982 Consent Order)

The January 15, 1982 consent order covers all Gull sales of Texaco motor gasoline and middle distillates during the period August 1973 through June 9, 1977. We propose that this consent order fund be distributed to Gull customers who have not already received a direct refund from Gull pursuant to the January 15, 1982 consent order and who satisfactorily demonstrate that they were injured by Gull's passthrough of Texaco's alleged overcharges. See n.5. The audit files indicate that the ERA reviewed Gull's records to determine the extent of Gull's passthrough of Texaco's alleged overcharges to certain customers. The audit files further indicate that all of the firms who were identified by the ERA and were listed as being entitled to a Gull refund for Texaco's alleged overcharges were paid in full by Gull. Those firms that received payment are listed in Appendix C to this Proposed Decision. We propose that the customers which already received refunds for the alleged Texaco overcharges be ineligible for refunds from the consent order escrow account. The eligible claimants will therefore be unidentified Gull customers who did not receive a refund from Gull in connection with Texaco's alleged overcharges.

In order to calculate refunds for eligible claimants in this proceeding

¹¹ Any firm not listed in Appendix B which became a Gull customer after May 3, 1975 may also be eligible for a refund if it submits documentation verifying its claim. In the event that unidentified customers establish their right to a refund, the proposed refund amounts will be adjusted.

(Case No. HEF-0085), we propose to adopt a volumetric refund presumption. The volumetric presumption assumes that the alleged Texaco overcharges were spread equally over all gallons of Texaco petroleum products marketed by Gull. The volumetric refund amounts in this case will be calculated by dividing the amount deposited in the consent order escrow account by the total gallonage (excluding those gallons for which refunds were made by Gull) of covered products sold by Gull to its wholesale and consignment accounts during the January 15, 1982 consent order period. Based upon the information available to us at this time, the volumetric refund amount will be \$0.001665 per gallon, exclusive of interest (\$873,880.54 consent order fund divided by 524,831,202 gallons of Texaco motor gasoline and middle distillates resold by Gull during the consent order period). We propose that any Gull customer who has not already received a refund from Gull for the Texaco overcharges may file a refund application based on the total gallons of motor gasoline and middle distillates it purchased during the consent order period.¹² A successful applicant will receive a refund equal to the volumes of Texaco product it purchased from Gull during the consent order period times the volumetric refund amount, plus a proportionate share of the accrued interest.¹³

V. Conclusion

Refund applications in these three proceedings should not be filed until after issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. We have, however, summarized the proposed methodology

¹² Texaco also made direct refunds totalling \$1,777,810.40 to Gull customers. These refunds have no bearing on the current proceeding, and a firm may apply for a Gull refund regardless of whether it received a direct refund from Texaco.

¹³ Since a consent order is necessarily the result of compromise, the volumetric refund amount derived from a consent order settlement is also a compromise. The volumetric refund amount does not purport to calculate the exact amount that a customer may have been overcharged. Rather it is a method by which we can estimate the portion of the consent order fund that should be allocated to a given purchaser. We recognize that the impact on an individual purchaser. We recognize that the impact on an individual purchaser could have been greater than the applicable volumetric refund amount, and we propose that any purchaser be allowed to file a refund application based on a claim that it incurred a disproportionate share of the injury associated with Texaco's alleged overcharges. See e.g., *Amstell Inc.*, 12 DOE ¶ 85,073 at 88,233-34 (1984); *Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,184 (1984) and cases cited therein.

in Appendix D of this Proposed Decision. Before disposing of any of the funds received, we intend to publicize the distribution process in the Federal Register and to notify all of the firms whose names and addresses are listed in the audit files of these proceedings. In the event that money remains after all meritorious claims have been disposed of in the first stage, undistributed funds could be distributed in a subsequent second-stage proceeding. However, we will not be in a position to consider that process until first stage refund proceedings are completed.

It is Therefore Ordered That:

(1) The refund amount remitted to the Department of Energy by Gull Industries, Inc. pursuant to the consent order executed on April 7, 1978 will be

distributed in accordance with the foregoing Decision.

(2) The refund amount remitted to the Department of Energy by Gull Industries, Inc. pursuant to the consent order executed on September 1, 1981 will be distributed in accordance with the foregoing Decision.

(3) The refund amount remitted to the Department of Energy by Gull Industries, Inc. pursuant to the letter of agreement executed on January 15, 1982 will be distributed in accordance with the foregoing Decision.

Appendix A-1

HEF-0086

April 7, 1978 Consent Order

"Consignment" Accounts

	Principal Consent order amount after adjustment ¹	Interest accrued (before September 1981)	Amount refunded or rolled back by Gull after consent order	Potential refund (excluding interest accrued after September 1981)
Bob's Gull	\$5,208.81	\$2,275.26	\$68.81	\$7,417.26
Boiser, Al	2,967.11	1,296.07	0.00	4,263.18
Coronata, Mario	6,410.74	2,800.28	0.00	9,211.02
D & D Discount	9,082.76	3,967.44	1,889.41	11,150.79
Denny's Gull	4,321.29	1,887.58	4,749.34	1,459.53
Don's Truckstop	9,698.50	4,236.40	1,759.76	12,175.14
Eigell, Robert	6,635.81	2,898.58	1,018.57	8,515.82
Martin, Stanley	8,510.82	3,717.61	149.90	12,078.53
Mills, Arthur	5,722.16	2,499.50	700.22	7,521.44
Newlun, Albert	2,221.87	970.54	267.11	2,925.30
Seiffers, Richard	3,512.96	1,534.45	175.23	4,972.08
Shane, Richard	3,565.30	1,557.36	84.72	5,057.94
Stanley, E. L.	2,958.77	1,117.70	395.54	3,280.93
Wescott, Steve	7,607.45	3,323.01	0.00	10,930.46
Total	78,024.25	34,081.78	11,246.61	100,859.42

¹ The consent order provided for reductions in refunds due individual firms to account for voluntary refunds or price rollbacks Gull made during the course of the consent order period. See n.4.

Appendix A-2

HEF-0086

April 7, 1978 Consent Order

Wholesale Accounts

	Consent order amount paid to DOE	Consent order amount as a percent of total amount paid to DOE	Potential refund (excluding interest after September 9, 1981)
Distler, John ¹	\$366.89	0.4954019	\$130.90
Jack's Payless	4,507.19	6.08740563	1,608.36
Jones, Bud ¹	977.70	1.32048049	348.89
Maxwell Oil Co. ²	3,888.81	5.25222231	1,387.70
New Way Fuels ¹	18,681.36	25.23102331	6,668.32
Paramount Oil	3,651.33	4.93148209	1,302.95
Perovich, Wm.	1,547.82	2.09048391	552.33
Reinhard Dist.	5,767.93	7.79015962	2,058.25
Star Oil	8,450.67	11.41346517	3,015.57
Truax Oil Co.	8,899.18	12.01922226	3,176.62
Trunk Oil	13,693.15	18.41291670	4,864.80
Vaden, Cliff	3,669.25	4.95589833	1,309.35
Total	74,041.23	100	26,421.14

¹ In addition to the designated consent order amount paid to DOE, these firms received partial refunds directly from Gull in the following amounts: John Distler, \$33,017.59; Bud

Jones, \$4,326.62; Maxwell Oil Co., \$3,897.31; and New Way Fuels, \$182.46.

² Maxwell Oil Co. is currently in default in the amount of \$9,743.39 plus interest in its obligations pursuant to a settlement agreement it entered into with the DOE. See *Maxwell Oil Co.*, Case No. HEF-0125 (dismissed by letter July 3, 1985). In the event Maxwell files a refund application, the fact that it is in arrears to the DOE will be taken into consideration in determining whether to disburse any refund for which it may be eligible. Cf. *Standard Oil Co. (Indiana)/ Marathon Petroleum Co.*, 12 DOE 185,007 (refund deposited in separate escrow account pending resolution of enforcement proceeding involving refund applicant).

³ See nn. 4 and 9.

APPENDIX A-3

HEF-0086

April 7, 1978 Consent Order

Firms whose consent order amounts were paid in full:

Wholesale Accounts

CK Company

C & M Company

Christenson Oil

Circle S Distributing

Denny's Heating Oil

Digas

Drain Oil

Dvorak Oil

Ferguson
Gas-A-Matic (Vancouver)
Gas-A-Matic
Val Goemaere
Paul Greig
H & E Enterprises
Thomas Hanson
Huling Brothers
Joe's Gas Stop
John's Carousel
Leathers Oil
Aaron Leisle
Lowell Oil
Mennis Oil Co.
D.E. Mercer
Milk Barn
Mobile Crane
Nichols
OK Cash
William Perovich
Prine Oil
Claire Reid/Bestway
Robben Oil
Ronco Oil Co.
Seattle Ready Mix
Shane's Supply
R.H. Smith
Ed Smith
Spear Oil
Joe K. Staley
Stewart Oil
Thrifty Gas
Tire Center
Valley/Smith Brothers
Edmund Vitt
Ken Wagon
Fred Wambough
Western Oil
Winston Oil Co.

"Consignment" Accounts

Elbert Adams
Lon Allen
Lou Allen
B & B Service
Chambers/Hill
Bill Cummins
William Flores
Four Corners Gull
Glenn's Gull
Chester Goad
Grand Gull
Don Gunner
Raynard Halverson
Jerry's Gull
Bert Jolly
William Perovich
Pittman Harold
Cletus Redmond
Harry Russell
Howard Swanstrom

Commission Accounts

Stations through which Gull refunded
alleged retail overcharges to consumers:

Robert Adams
Robert Akers
G. Anderson
G. M. M. Anderson
Russ Appleyard
Jay Arlen
William Bentley
Terry Berg
Phil Browder
Troy Church
Circle S Distributing
Martin Diesberg
John Distler
Rose Draper
Oscar Eady
Marlin Erickson
Robert Fite
Ralph Gabbard
James Haven
David Hought
Tsai Hsu
D. Johnson/Kent Gull
H. Johnson
Kortman
Norm's MacDonald
Larry Meyers
Richard Neff
Al Newlun
Richard Oughton
Tom Papineau
Lloyd Paxton
Roberts
Richard Seifflein
Shamblin
Lou Spurlock
John Taylor
Robert Utermarck
Mike Vess
Doug Ward
Ralph Webb
Don wesley
Allan Widell

Appendix B

HEF-0084

September 1, 1981 Consent Order,
Eligible "Consignment" & Wholesale
Claimants.

Firm	Percentage of alleged overcharges	Potential refund
Adams, Elbert	0.012176337	\$637.33
Allen, Lon	0.01554325	81.36
B&B Service	0.14651277	756.88
Bob's Gull	0.15359861	803.97
Boiser, Al	0.09689718	507.18
C&M Supply	0.00933502	48.86
CK Company	0.00618963	32.40
Chambers (Hill)	0.15348834	803.39
Christenson Oil	0.01700746	89.02
Circle S Dist. Co.	0.00028253	11.48
Coronata, Mario	0.17417591	911.67
Cummins, Bill	0.08965539	469.27
D&D Discount	0.27992232	1,465.17
Denny's Heating	0.02785400	145.79
Denny's Gull	0.14568344	762.54

Firm	Percentage of alleged overcharges	Potential refund
Digas Oil	0.00916113	47.95
Distler, John	0.83127137	4,351.04
Don's Truckstop	0.27190144	1,423.19
Drain Oil	0.01035227	54.19
Dvorak Oil	0.11821062	618.74
Eigell, Robert	0.22427794	1,173.92
Ferguson	0.00020032	1.05
Flores, William	0.40159368	2,102.02
Four Corners Gull	0.00899637	47.09
Gas-A-Matic	0.31626308	1,655.38
Gas-A-Matic Vanc	0.03082092	161.32
Gleen's Gull	0.05368948	281.02
Goad, Chet	0.15191940	795.18
Goemaere, Val	0.01162921	60.67
Goshen CVB Newton	0.38266102	2,002.92
Grand Gull	0.11697629	612.28
Greig, Paul	0.02762530	144.60
Gunner, Don	0.09192511	481.15
H&E Enterprises	0.00989389	51.79
Halverson, Raynard	0.06145093	321.65
Hanson, Thomas	0.09168956	479.92
Huling Bros.	0.01238220	64.81
Jack's Payless	0.11008554	576.21
Jerry's Gull	0.11366256	594.93
Joe's Gas Stop	0.00424322	22.21
John's Carousel	0.00065348	3.42
Jolly, Bert	0.09114439	477.07
Jones, Bud	0.13242427	693.14
Leathers Oil	0.02959063	154.88
Leisle, Aaron	0.01035194	54.18
Lowell Oil	0.00255520	13.37
Martin, Stanley	0.25704821	1,345.44
Maxwell Oil*	0.14926371	781.28
Mennis Oil	0.03340809	174.86
Mercer, D.E.	0.00017976	1.94
Milk Barn	0.00031385	1.64
Mills, Arthur	0.18521526	969.45
Mobile Crane	0.00927368	48.54
Newway Fuel	0.45459796	2,431.80
Newlun, Albert	0.09481994	496.31
Nichols	0.00240153	12.57
OK Cash	0.00274279	14.36
Paramount Oil	0.06958850	468.92
Perovich, William	0.10269107	537.51
Perovich, William	0.03615505	199.71
Pittman, Harold	0.09101520	476.39
Prine Oil	0.00260348	13.63
Radmond, Cletus	0.15504455	811.53
Reid/Bestway	0.22315433	1,168.03
Reinhart Dist.	0.14196091	743.05
Robben Oil	0.02371322	124.12
Ronco Oil Co.	0.04951837	259.19
Russell/Portland	0.15796319	826.81
Russell/Saiam	0.39620010	2,073.79
Seattle Ready Mix	0.07794852	408.00
Seifflein, Richard	0.12059213	631.20
Shane, Richard	0.13278119	695.00
Shane's Supply	0.00733086	38.37
Smith, R.H.	0.02974896	155.71
Smith, Ed	0.00046132	2.41
Staley, Joe K.	0.00148444	7.77
Stanley, Everett	0.03372798	490.59
Star Oil	0.20771395	1,087.22
Stewart Oil	0.00157416	8.24
Swanstrom, Howard	0.14443031	755.98
Thrifty Gas	0.00503816	26.32
Tire Center	0.01528159	79.99
Truax, Mike	0.17154502	897.90
Trunkey Oil	0.26148979	1,368.69
Valley/Smith Bros.	0.31166606	1,631.29
Vitt, Edmund	0.01906088	98.17
Wagon Trucking	0.00904366	47.34
Wambough, Fred	0.000402561	21.07
Western, Steve	0.20689039	1,082.91
Western Oil	0.08195456	428.97
Winston Oil Co.	0.06684131	349.86
Yaden, Cliff	0.097078324	475.18
Total	1.000000000	52,342.00

* These customers will not be eligible for refunds unless the amount of accrued interest is sufficient to raise their refund to the minimum of \$15.00.

** See n. ** to Appendix A-2.

Appendix C

HEF-0085

January 15, 1982 Consent Order

Gulf Customers Who Received
Texaco Refunds from Gull.

Addision, Lon

B&B Service

CK Company

Christenen Oil

Chuck's Oil

Denny's Gull

Denny's HO Eugene

Denny's HO

Denny's Heating Oil

Distler, John

Don's Truck Stop

Eugene Heating Oil

Flying J Oil

Four Corners Gull

Glenn's Gull

Golden Gate Petroleum

Gunner, Don

Hanson, Eugene

Huling Seattle

Jack's Auto Parts

Jerry's Gull

Leisle, Aaron

Lost Creek, Chas. Liles

McCall Oil

Mercer, DE

Mills, Arthur

Mustang Oil

Newway Fuel

Reed, Claire (Bestway)

Redmond, Cletus

Robben Oil

Rusich, Ivan

Salem #2/Russell #1

Salem #2/Boedecker

Shourd, William

Stark St/Boedecker

Swanstrom, Howard

Taylor, J.

Time Oil

Trunkey's Oil

Vess, Mike

APPENDIX D.—SUMMARY OF PROPOSED REFUND PROCEDURES

Consent order date and case No.	Consent order period	Eligible claimants	Method of refund calculation
Apr. 7, 1978, HEF-0086	Nov. 1, 1973-May 3, 1975	"Consignment" accounts listed in Appendix A-1, wholesale accounts listed in Appendix A-2	Balance of original refunds designated in consent order.
Sept. 1, 1981, HEF-0084	Feb. 1, 1974-Sept. 30, 1974, May 3, 1975-June 30, 1977	"Consignment" and wholesale accounts listed in Appendix B	Pro-rata distribution of consent order amount.
Jan. 15, 1982, HEF-0085	Aug. 19, 1973-June 9, 1977	All Gull customers except commission accounts and those listed in Appendix C.	\$0.001665, plus interest, for each gallon of covered product purchased during consent order period.

[FR Doc. 86-1677 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

**ENVIRONMENTAL PROTECTION
AGENCY**

[SAB-FRL-2960-3]

**Science Advisory Board;
Environmental Engineering
Committee; Meeting**

Under Pub. L. 92-463, notice is hereby given that a one-day meeting of a Subcommittee of the Environmental Engineering Committee of the Science Advisory Board will be held at the Environmental Protection Agency, Conference Room 1101, West Tower, 401 M Street SW, Washington, DC on February 12, 1986. The meeting will begin at 10:00 a.m. and last until 5:00 p.m.

The purpose of the meeting will be to commence review of draft Agency guidance for the definition of Ground Water Vulnerability for Resource Conservation and Recovery Act (RCRA) facilities (required under section 3004 (o)(7) of RCRA). The draft guidance presents a site-specific method for ground water vulnerability determination based on a time-travel calculation.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Harry

C. Torno, Executive Secretary, at (202) 382-2552, or Terry F. Yosie, Director, Science Advisory Board, at (202) 382-4126. Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make oral or written comments must contact Mr. Torno prior to February 7, 1986 in order to be placed on the agenda.

Any member of the public wishing to attend should contact Mrs. Brenda Browne at (202) 382-2552.

Dated: January 16, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-1679 Filed 1-24-86; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-2960-4]

**Science Advisory Board;
Environmental Engineering
Committee; Meeting**

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Engineering Committee of the Science Advisory Board will be held at the Environmental Protection Agency, Conference Room 3906/3908M, 401 M Street SW, Washington, DC on February 13-14, 1986. The meeting will begin at 9:00 a.m. and last until 5:00 p.m. on February 13, and will begin at 9:00 a.m. and last until 1:00 p.m. on February 14.

Agenda items will include final approval of committee reports on their review of Agency guidance for the establishment of Alternate Concentration Limits and of a RCRA Ground Water Monitoring Technical Enforcement Guidance Document. The committee will also be briefed on the status of technical documents relating to proposed revisions to Agency Ocean Dumping Regulations and to regulations for the reuse and disposal of sewage sludge.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382-2552, or Terry F. Yosie, Director, Science Advisory Board, at (202) 382-4126. Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make oral or written comments must contact Mr. Torno prior to February 7, 1986, in order to be placed on the agenda.

Any member of the public wishing to attend should contact Mrs. Brenda Browne at (202) 382-2552.

Dated: January 16, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-1678 Filed 1-24-86; 8:45 am]

BILLING CODE 6560-50-M

[AD-FRL 2879-5]

Toxic Pollution Control; Intent to List Cadmium Under Section 112 of the Clean Air Act and Solicitation of Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The public comment period on the EPA's Notice of Intent to List cadmium under section 112 of the Clean Air Act and Solicitation of Information (50 FR 42000, October 16, 1985) has been extended 90 days.

DATES: Written comments to be included in the record on the subject notice must be postmarked no later than April 14, 1986. Written comments responding to, supplementing, or rebutting written or oral comments received at the public hearing must be postmarked no later than April 14, 1986.

ADDRESSES: Comments on the Notice of Intent to List should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Environmental Protection Agency, ATTN: Docket No. A-81-37, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert G. Kellam, Pollutant Assessment Branch (MD-12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (telephone: Commercial (919) 541-5645/FTS: 629-5645).

SUPPLEMENTARY INFORMATION: In the course of conducting the public hearing on the Notice of Intent, EPA received requests to extend the public comment period to enable sources of cadmium emissions to conduct source and emission tests and other data-gathering activities to provide information requested by EPA in the October 16 notice. In that notice, EPA requested information on cadmium source location, emission rates and control equipment, control efficiencies for cadmium emission control technology similar to those for total particulate emission control, problems associated with establishing emissions standards for cadmium, and information on sources not identified in the Notice of Intent that would be likely to emit significant amounts of cadmium into the air. The 90-day extension to April 14, 1986, will enable commenters to respond more fully through additional testing,

analyses, and studies to the EPA's requests for information.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86-1683 Filed 1-24-86; 8:45 am]

BILLING CODE 6580-50-M

FEDERAL COMMUNICATIONS COMMISSION**Information Collection Requirements Approved by OMB**

January 21, 1986

The following information collection requirements have been approved by the Office of Management and Budget. For further information contact Doris Benz, FCC, (202) 632-7513.

OMB No.: 3060-0113

Title: Equal Employment Opportunity Program—10 Point Model Program and Guidelines

Form No.: FCC 396

The approval on FCC 396-A has been extended through 1/31/87. The April 1984 edition will remain in use until updated forms are available.

OMB No.: 3060-0120

Title: Equal Employment Opportunity Program—5 Point Model Program and Guidelines

Form No.: FCC 396-A

The approval on FCC 396-A has been extended through 1/31/87. The January 1984 edition will remain in use until updated forms are available.

OMB No.: 3060-0132

Title: Supplemental Information—72-76 MHz Operational Fixed Stations

Form No.: FCC 1068-A

The approval on FCC 1068-A has been extended through 12/31/86. The October 1984 edition will remain in use until updated forms are available.

Federal Communications Commissions.

William J. Tricarico,

Secretary.

[FR Doc. 86-1619 Filed 1-24-86; 8:45 am]

BILLING CODE 6712-01-M

[FCC 85-663]

KQED, Inc., et al.; Memorandum Opinion and Order

In re applications of MM Docket No. 85-396:

File No.

KQED, INC., San Francisco, CA, for renewal of licenses of noncommercial stations.

File No.

KQED-FM..... BRED-237,
800801ZS,
and
830801WD.
KQED-TV, and..... BRET-25,
800801LQ,
and
830801LK.
KQEC-TV BRET-203 and
800801LV.

In re applications of MM Docket No. 84-567:

File No.

KQED, INC., San Francisco, CA, for renewal of license of non-commercial educational station KQEC (TV), Channel 32, San Francisco, CA.

In re applications of MM Docket No. 84-568:

File No.

Minority Television Project, San Francisco, CA, for a construction permit for a new non-commercial educational television station on Channel 32, San Francisco, CA.

Adopted: December 24, 1985.

Released: January 3, 1986.

By the Commission.

1. Before the Commission are: (1) the above-captioned applications; (2) a Petition for Leave to Intervene filed May 10 by Minority Television Project (Minority)¹ and an Opposition thereto filed May 22 by KQED, Inc. (KQED); (3) Contingent Comments filed May 24 by Minority, Comments filed June 12, 1985 by the Mass Media Bureau and June 14 by the California Public Broadcasting Forum, *et al.* (Forum)² and KQED; (4) Reply Comments filed July 11 by Forum and July 15 by KQED;³ (5) a Petition for Leave to Amend filed August 13 by KQED, and (6) a Petition for Leave to Amend filed September 17 by Minority, Comments filed September 26 by KQED, and a Reply filed October 8 by Minority.

I. Background

2. KQED is the licensee of noncommercial Stations KQED-FM, KQED-TV, and KQEC-TV, all at San

¹ Minority filed addenda to this pleading on May 16, 1985 and May 24, 1985.

² Forum includes in addition to the California Public Broadcasting Forum: the Bay Area Bilingual Education League, the NAACP, the Community Coalition for Media Change, the Public Media Center, and the Committee to SAVE KQED.

³ As an additional matter, KQED and Forum jointly filed requests for extension of time on May 8 and May 24, 1985 and Forum filed similar requests on June 6 and June 28. Good cause having been shown, these requests will be granted.

Francisco, California. In 1977, Forum filed a Petition to Deny KQED's renewal applications for the three stations, alleging that: (1) KQED engaged in improper commercial broadcasting, (2) KQED refused to disclose financial information and open its meetings to the public, (3) KQED inadequately served community needs, and (4) KQED committed EEO violations. The Commission denied Forum's Petition to Deny and renewed KQED's licenses for the 1977-80 term.⁴ In 1980, Forum filed a Petition to Deny against KQED's renewal applications for the year. This Petition alleged that KQED had committed misrepresentations to the Commission concerning the reasons that KQEC-TV had gone dark in late 1979 and early 1980. The Commission also denied this Petition and renewed KQED's licenses for the 1980-83 term. Simultaneously, the Commission denied reconsideration of its action previously granting renewal for the 1977-80 license term.⁵

3. Forum appealed the Commission actions renewing KQED's licenses to the United States Court of Appeals for the District of Columbia Circuit. At about the same time, KQED filed applications to renew its station licenses for the 1983-88 and 1983-90, license terms.⁶ Minority then filed an application for a construction permit mutually exclusive with KQEC-TV. Additionally, Forum filed a Petition to Deny all three stations. KQED's renewal application for KQEC-TV and Minority's competing application were designated for a comparative renewal hearing.⁷

4. On January 11, 1985, the Court of Appeals reversed the Commission's renewal of KQED's licenses for the 1977-80 and 1980-83 terms.⁸ Although the Court affirmed the other aspects of the Commission's action, the court held that Forum's allegations of misrepresentation raised substantial and material questions of fact which warranted an evidentiary hearing. Pursuant to the court's directive, the parties were requested to file comments as to how the Commission should proceed after this matter was

remanded.⁹ Minority has filed a Petition for Leave to Intervene in any hearing conducted pursuant to the court's remand.

5. On January 4, 1985, prior to the court's remand, Minority voluntarily sought dismissal of its construction permit application. On January 18, after the court decision was announced, Minority rescinded its request that its application be dismissed. However, on January 22, the Presiding Judge dismissed Minority's application and terminated the comparative renewal proceeding for KQEC-TV, apparently unaware of Minority's intervening request to rescind.¹⁰ The Review Board granted Minority's appeal of the Presiding Judge's action and reinstated Minority's application in hearing status.¹¹ Because of the relationship between the existing comparative renewal proceeding and the proceeding remanded by the Court of Appeals, the Board referred the 1983 applications to the Commission instead of returning them to the Presiding Judge.

II. Misrepresentation Issue

6. The misrepresentation issue arises from the following facts. In 1971, KQED acquired KQEC-TV, a smaller station than its existing station KQED-TV, also in San Francisco. Because of budgetary problems, KQED, with Commission approval, did not operate KQEC-TV during the years 1972-77. In 1975, the Commission warned KQED that it would no longer accept budgetary problems as a justification for continued nonoperation of the station. A Commission Order that KQEC-TV resume operation did not become effective until 1977, however, at which time the station returned to the air. In November 1979, the station once again went dark, because, as KQED explained, a master routing switcher needed replacement. The station resumed operation for three weeks in December 1979, but ceased operation during the months of January to May 1980.

7. During the period in which KQEC-TV remained dark, KQED notified the Commission on three occasions that the delays in resuming operation were due to the replacement of the switching equipment. In its 1980 Petition to Deny and Petition for Reconsideration Forum asserted that these were misrepresentations. Forum proffered an affidavit by Henry Kroll, former director of KQED, which stated that the deactivation of KQEC-TV resulted

solely from budgetary reasons, which the Commission had rejected as a justification in 1975, and that the deactivation was anticipated to last through August 1980. Additionally, Forum proffered as corroborating evidence: (1) The KQED board resolution approving the deactivation of KQEC-TV, (2) statements in a monthly magazine sent to KQED members, and (3) an internal KQED memorandum. KQED responded by alleging that the budgetary problems referred to in Forum's evidence were those specifically associated with the switcher replacement and not general budgetary considerations. KQED submitted affidavits by KQED President Tiano and Chief Engineer Zastrow to support its position.

8. The Commission found that no question of misrepresentation had been raised, noting that the shut down or KQEC-TV had only been temporary, new equipment was in fact installed, and the Commission had been informed of KQED's progress in installing the new equipment. The court disagreed and held that Forum's evidence raised a substantial question of fact as to KQED's intent in shutting down the station. The court ruled that it was arbitrary and capricious for the Commission to require Forum to make a more specific showing of deceptive intent where KQED's had the only access to relevant facts. According to the court, the documentation submitted by Forum was adequate to raise a substantial question that the explanation gave for deactivating KQEC-TV was false and KQED knew it was false.

9. All of those filing comments agree that KQED's 1977 and 1980 renewal applications for Stations KQED-TV, KQED-FM, and KQEC-TV must now be designated for evidentiary hearing on the question of misrepresentation. Although KQED, Forum, and the Bureau propose somewhat different language for the issue to be designated, they essentially agree as to the scope of the issue. Thus, we need not belabor the choice of language. The commenters also agree that because the question of misrepresentation goes to KQED's requisite qualifications, all three license renewals must be designated.

10. KQED and Forum disagree over how the initial burden of proceeding with the introduction of evidence should be allocated in this case. KQED, relying on *Office of Communication of the United Church of Christ v. FCC*,¹²

⁴ *KQED, Inc.*, 77 FCC 2d 9873 (1980).

⁵ *KQED, Inc.*, 88 FCC 2d 1159 (1982), *recon. denied*, FCC 83-405, released September 20, 1983. Forum also made its new allegations in the Petition For Reconsideration of the Commission's 1977 renewal.

⁶ Congress extended the license term for television stations from three years to five years and for radio stations from three years to seven years. Pub. L. 99-35, August 13, 1981.

⁷ Mimeo No. 4615, released June 8, 1984.

⁸ *California Public Broadcasting Forum v. FCC*, 752 F.2d 670 (D.C. Cir. 1985).

⁹ Mimeo No. 3799, released April 10, 1985.

¹⁰ FCC 85M-319, released June 8, 1984.

¹¹ FCC 84R-34, released April 26, 1985, *modified*, FCC 85R-45, released May 28, 1985.

¹² 425 F.2d 543, 546 n. 6 (D.C. Cir. 1969).

argues that the burden of proceeding should be on Forum because it intends to "prosecute" the issue. Forum responds that since the designated issue arises from KQED's documents and concerns information within KQED's knowledge, KQED should bear the burden. We will follow *United Church of Christ* and place the burden on Forum. Forum has already indicated, in seeking the misrepresentation issue in the first instance, that it has significant evidence in support thereof. If Forum needs to augment the information in its possession, it will have recourse to the Commission's discovery processes.

III. Relationship Between 1977/1980 and 1983 Proceedings

11. The Mass Media Bureau and Minority propose consolidating the proceeding remanded by the Court of Appeals involving KQED's 1977/1980 renewals and the existing comparative renewal proceeding involving the 1983 renewal of KQED-TV.¹³ The Bureau asserts that, since the misrepresentation issue bears on KQED's requisite qualifications, it could have an impact on the disposition of the 1983 proceeding. Accordingly, the Bureau suggests that considerations of administrative efficiency and due process favor consolidation. Minority observes that KQED is a party to both proceedings and that consolidation would avoid duplicative litigation of the issues. Minority also notes that the misrepresentation issue could moot the comparative renewal proceeding.

12. Forum and KQED oppose consolidation. KQED maintains that the misrepresentation issue is narrow and should be expeditiously decided to remove the cloud from KQED's reputation. KQED also points out that the issues involved in the comparative renewal proceeding are broader and unrelated to misrepresentation. Forum finally stresses that the issues involve two different license terms and that both proceedings will be unnecessarily complicated by the participation of parties in proceedings in which they have no direct interest or ability to assist the Commission. KQED and Forum therefore suggest making the 1983 proceeding subject to the outcome of the 1977/1980 proceeding.

13. We will consolidate the two proceedings. KQED's requisite qualifications to be determined in the 1977/1980 proceedings are relevant to

the 1983 comparative renewal proceeding and might affect the outcome of the later proceeding. Hence, it is appropriate that Minority have the opportunity to protect its interests by participating in the litigation of the misrepresentation issue.¹⁴

Administratively these cases are not extraordinarily complex,¹⁵ and we believe that the resources of both the parties and the Commission would best be employed by dealing with all parties and issues in a coordinated fashion before a single Administrative Law Judge.¹⁶

14. Accordingly, it is ordered, that the Joint Requests for extension of Time filed May 8, 1985 and May 24, 1985 by KQED, Inc. and the California Public Broadcasting Forum, *et al.* and the Requests for Extension of Time filed June 6, 1985 and June 28, 1985 by the California Public Broadcasting Forum, *et al.* ARE GRANTED.

15. It is further ordered that, good cause having been shown, the Petition for Leave to Amend filed August 13, 1985 by KQED, Inc. is granted.¹⁷

16. It is further ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the 1977/1980 applications of KQED, Inc. for renewal of Stations KQED-FM, KQED-TV, and KQEC-TV (BRED-237 and BRED-800801ZS, BRET-257 and BRET-800801LQ, and BRET-203 and BRET-800801LV) ARE DESIGNATED FOR HEARING at a time and place to be specified in a subsequent Order, upon the following issue:

To determine whether KQED, Inc. misrepresented the reason for suspending the operations of Station KQEC-TV from November 1979 through May 1980 and, if so, the effect thereof of KQED, Inc.'s requisite qualifications to remain a Commission licensee.

¹⁴ See *RKO General, Inc.*, 94 FCC 2d 690 (1983); *Advance Mobile Phone Service, Inc.*, 91 FCC 2d 512, 520 n. 19 (1982).

¹⁵ Compare cases cited note 14.

¹⁶ See *Seaboard Broadcasting Corp.*, 18 RR 2d 849, recon. granted in part, 26 FCC 2d 653 (1970). Compare *Radio Stamford, Inc.*, 35 FCC 2d 776 (1972), recon. denied, 39 FCC 2d 84 (1973). Finally, in addition to the 1977 and 1980 renewal applications remanded by the court, we will also designate for hearing KQED's 1983 applications for KQED-TV and KQED-FM. This action does not require the consideration of any additional issues, since Forum's 1983 Petition to Deny merely reiterates the allegations previously made in 1977 and 1980. Forum's Petition to Deny at 5. This will accord with the Commission's usual practice of considering all pending application for renewal of the same station in consolidated fashion.

¹⁷ This unopposed pleading reports that a complaint of employment discrimination by Wendy Ho has been dismissed by the EEOC and the California State Department Fair Employment and Housing.

17. It is further ordered, that the California Public Broadcasting Forum, *et al.* IS MADE a party to this proceeding.

18. It is further ordered, that the California Public Broadcasting Forum, *et al.* shall proceed with the initial presentation of evidence with respect to the issue designated in paragraph 16 and that the burden of proof with respect to this issue shall be on KQED, Inc.

19. It is further ordered, that the Petition to Deny filed November 1, 1983 by the California Public Broadcasting Forum, *et al.* is granted to the extent indicated herein and otherwise is denied; and that the 1983 applications of KQED, Inc. for renewal of KQED-FM (File No. BRED-830801WD) and KQED-TV (File No. BRET-830801LK) are designated for hearing as part of the proceeding specified in paragraph 16.

20. It is further ordered, that the 1983 application of KQED, Inc. for renewal of station KQEC-TV (BRET-830301LJ) and the application of Minority Television Project for a construction permit (BPET-831101KI) ARE REINSTATED in hearing status.

21. It is further ordered, that the proceedings specified in paragraphs 16 and 20 are consolidated.

22. It is further ordered, that the Petition for Leave to Intervene filed May 10, 1985 by Minority Television Project IS DISMISSED as moot.

23. It is further ordered, that the Petition for Leave to Amend filed September 17, 1985 by Minority Television Project and related pleadings are referred to the Presiding Judge for disposition.

24. It is further ordered, that, to avail themselves of the opportunity to be heard, any applicant or party respondent, who has not already done so, shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

25. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

26. It is further ordered, that the Secretary send by Certified Mail-Return Receipt Requested on copy of this

¹³ Pursuant to § 1.227(a)(1) of the Commission's Rules any cases involving the same applicant or substantially the same issues may be consolidated where such action will best conduce to the proper dispatch of business and to the ends of justice.

Memorandum Opinion and Order to the applicants and to the petitioners.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc 86-1615 Filed 1-24-86; 8:45 am]

BILLING CODE 6712-01-M

[Report No. CL-86-57]

Common Carrier Public Mobile Services Information; Filing Information for Cellular Markets 121-305

January 21, 1986.

The Mobile Services Division has received a number of inquiries concerning the filing requirements pertaining to cellular markets 121-305. Some of the most frequently asked questions, and the answers of the Division to them, follow:

Q. Must the microfiche copies which accompany the application reproduce the signatures which appear on the original application, certification and verification forms?

A. No. Only the original application itself need be executed. The duplicate copy of the application, and the microfiche copies, need not bear facsimiles of the signatures. However, they should be conformed to identify the signatory.

Q. Must the full scale 1:250,000 map be duplicated in the microfiche copies?

A. No. The microfiche copy need only contain a reproduction of the 8.5 by 11 inch version of the map. The original and paper duplicate copy of the application must include both the full-scale 1:250,000 map required by § 22.903(a) and the 8.5 by 11 inch version required by § 22.913(a)(2).

Q. Does revised § 22.913(b)(4) of the rules require that the applicant split up the Schedule B's filed with the application so as to include the lead cell site with the "Initial Form 401" which follows the certification, while the Schedule B's pertaining to the "remaining cell sites" fall at the end of the application?

A. No. Applicants may consolidate all Schedule B's at the end of the application. The "Initial Form 401" following the certification may include only Schedule A.

Q. Can the legal portions of the application and the technical portions of the application be reproduced on separate microforms?

A. Yes. As long as the microfiche copy of the application is complete and is in the same order as the original application, and provided that both

microfiche cards are readably labeled at the top, as provided in § 22.913(c).

Q. Revised rule § 22.913(b)(5) imposes certain page limitations on the informational showings required under particular subsections of 22.913(a). Do these page limitations apply to the entire exhibit filed in response to each subsection, or rather to each topic addressed in the subsection?

A. Responses to a particular subsection of the rules should be combined in a single exhibit. The entire exhibit must meet the page limitation.

Q. May applicants respond "Does Not Apply" to items 21, 37(j) of the FCC Form 401 and to the box immediately preceding item 37(h) of the form.

A. Yes.

Q. Must applicants affirmatively state in their applications their willingness to engage in frequency coordination and to cooperate to resolve frequency conflicts?

A. No. These obligations are set forth in the rules and need not be reiterated in the applications.

Q. May applicants combine in a single exhibit information required under more than one rule section?

A. No, except that the information called for by §§ 22.913(a)(11) and 22.13(a)(1) may be combined in a single response. This combined exhibit should immediately follow the table of contents.

Q. Now that Item 32 of the Form 401 asks whether a grant of the application is an environmental "major action", can applicants eliminate the separate exhibit contemplated by § 22.913(a)(1) of the rules?

A. Yes, provided that the answer to item 32 is "No".

Q. Is there a difference between the information required by §§ 22.13(a)(1) and 22.13(a)(2)?

A. Yes. Section 22.13(a)(1) requires a disclosure of real parties in interest, applicant subsidiaries and affiliates, and ownership information. Section 22.13(a)(2) requires a demonstration of the applicant's "qualifications to hold an authorization".

Q. How should the microfiche envelope be presented to the Commission?

A. Two jacketed microfiche copies in a clearly labeled envelope, attached to the original application by clip or rubber band, should be presented to the Commission. The envelope should not be bound into the original or paper copy of the application.

Q. Will applicants be able to get a receipt stamped copy of the microfiche envelope?

A. No. Only a hard copy of the

original application will be receipt stamped.

Q. Must the counsel's transmittal letter to the Commission be included in the microfiche copy?

A. No.

Q. Where the large CGSA map appear in the application?

A. The 1:250,000 scale map may be inserted either in the exhibit pertaining to § 22.913(a)(2) or at the end of the application. The 8.5 by 11 inch map must be inserted in the § 22.913(a)(2) Exhibit.

Q. Must exhibits be submitted in response to § 22.913(a)(9) and (10)?

A. Non-wire carriers need not respond to § 22.913(a)(9) while wireline carriers must do so. Section § 22.913(a)(10) is inapplicable to applications for markets 121-305.

Q. Must applicants provide a frequency plan that shows specific frequencies for each site?

A. No. The applicant must, however, provide the number of frequencies to be used at each site and list either the specific frequencies or the groups from which the frequencies will be selected. Similarly, applicants need not list specific frequencies in response to Item 33(j).

Q. Must any FAA filing be made prior to filing the Form 401?

A. Any required FAA Form 7460-1 must be filed with the FAA prior to, or concurrently with, the filing, and 35(f) must be answered appropriately.

Q. Which editions of Form 401 may be used?

A. FCC Form 401 dated January 1985, bearing OMB approval number 3060-0046, must be used. Earlier editions of the form may not be used.

Applicants with further questions regarding filing requirements for markets 121-305 should contact Lawrence Krevor at (202) 632-6450 or Myron Peck at (202) 632-6400 for further information.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-1617 Filed 1-24-86; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1563]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

January 21, 1986.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to § 1.429(e). Oppositions to such petitions for reconsideration must

be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Request to Amend the Broadcast Network Affiliation Rules and Employment Practice Rules to Extend to Networks and Licensee Headquarters Employment Practice Requirements Now Mandated for Licensees. (RM-3397)

Filed by: David Honig, Attorney for the National Black Media Coalition on 12-16-85.

Subject: Amendment of § 97.114 of the Amateur Radio Service Rules to prohibit disqualified persons from participating in third-party communications. (PR Docket No. 85-51)

Filed by: David B. Popkin on 1-3-86.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-1618 Filed 1-24-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

(No. AC-464)

Tucker Federal Savings and Loan Association, Tucker, GA; Final Action Approval of Conversion Application

Dated: January 13, 1986.

Notice is hereby given that on January 10, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Tucker Federal Savings and Loan Association, Tucker, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, N.W., Washington, DC 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-1687 Filed 1-24-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Freight Forwarder License; Apollo International Forwarders

Notice is hereby given that the following applicant has filed with the

Federal Maritime Commission an application for license as an ocean freight forwarder pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why the following applicant should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Apollo International Forwarders, 2210 McLester Street, Elizabeth, NJ 07201.

Officers: Marty Berger, President, Emil Schneider, Vice President

Dated January 22, 1986.

By the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 86-1712 Filed 1-24-86; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 85-14]

Cari-Cargo International, Inc. and Jorge Villena; Amendment to Order of Investigation and Hearing

This proceeding was instituted by Order of Investigation and Hearing served May 3, 1985, to determine whether Respondents Cari-Cargo International, Inc. and Jorge Villena have violated sections 18(b)(1) and 18(b)(3) of the Shipping Act, 1916 (1916 Act) (46 U.S.C. app. 817(b) (1) and (3)), and 8(a)(1) and 10(b)(1) of the Shipping Act of 1984 (1984 Act) (46 U.S.C. app. 1707(a)(1) and 1709(b)(1)), by operating as a common carrier without a tariff on file with the Commission. On the basis of additional evidence which the Commission's Bureau of Hearing Counsel uncovered relating to Respondent's practices in tendering cargoes to underlying vessel-operating carriers allegedly under incorrect descriptions, the investigation was expanded by Amendment to Order of Investigation and Hearing served August 7, 1985, to include issues under section 10 Initial Paragraph, 1916 Act (46 U.S.C. app. 815) and section 10(a)(1) of the 1984 Act (46 U.S.C. 1709(a)(1)).

On December 4, 1985 Hearing Counsel filed a Motion to Further Modify Order of Investigation (Motion). The Motion advises the Presiding Administrative Law Judge (Presiding Officer) that additional information has recently come to Hearing Counsel's attention, alleging that Respondent Jorge Villena has been operating a company, known as Sea Trade Shipping, which issued a non-vessel operating common carrier (NVOCC) bill of lading as late as September 13, 1985. Hearing Counsel believes that Mr. Villena has been

operating or at least advertising this company as an NVOCC during the course of this proceeding and that he may have been assessing rates without regard to a tariff which Sea Trade Shipping filed effective September 5, 1985. To ensure that any orders resulting from this proceeding reach the full extent of Mr. Villena's activities, Hearing Counsel requests that Sea Trade Shipping be named as a respondent. No reply to Hearing Counsel's Motion has been received.

Rule 147 of the Commission's Rules of Practice and Procedure (46 CFR 502.147) authorizes a presiding administrative law judge to "delineate the scope of a proceeding instituted by order of the Commission by amending, modifying, clarifying or interpreting said order * * *." However, Rule 147 does not authorize a presiding judge to enlarge a proceeding by adding respondents. *See Rules of Practice and Procedure*, 18 SRR 1387, 1388 (1976). Therefore, under the Commission's Rules, the Presiding Officer in this proceeding referred Hearing Counsel's Motion to the Commission. *See Rule 73(a)* of the Commission's Rules of Practice and Procedure. (46 CFR 502.73(a).)

The Order of Investigation and Hearing will be modified to include Sea Trade Shipping as a respondent. This should not delay the proceeding as Hearing Counsel states that it would be prepared to go forward immediately in oral hearing to present its evidence as it relates to Sea Trade Shipping.

Therefore, it is ordered, that the first ordering paragraph of the May 3, 1985 Order of Investigation and Hearing in this proceeding, as modified, be further modified as follows:

Therefore, it is ordered, that, pursuant to section 22 of the Shipping Act, 1916 (46 U.S.C. app. 821), and section 11 of the Shipping Act of 1984 (46 U.S.C. app. section 1710), a formal investigation and hearing is hereby instituted to determine:

1. Whether Jorge Villena, Sea Trade Shipping and/or Cari-Cargo International, Inc. violated section 18(b)(1) of the Shipping Act, 1916, and section 8(a)(1) of the Shipping Act of 1984 by performing common carrier operations and failing to maintain with the Commission a tariff showing all rates, charges, classifications, rules and practices;
2. Whether Jorge Villena, Sea Trade Shipping and/or Cari-Cargo International, Inc. violated section 18(b)(3) of the Shipping Act, 1916, and section 10(b)(1) of the Shipping Act of 1984 by charging different rates for the transportation of property than the effective tariff rates filed with the Commission;
3. Whether Jorge Villena, Sea Trade Shipping and/or Cari-Cargo International, Inc. knowingly and wilfully, by means of false classification, obtained or attempted to

obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable in violation of section 16, Initial Paragraph, of the Shipping Act, 1916, and section 10(a)(1) of the Shipping Act of 1984:

4. Whether, in the event Jorge Villena, Sea Trade Shipping and/or Cari-Cargo International, Inc. is found to have violated section 16 Initial Paragraph, or sections 18(b)(1) or (3), of the Shipping Act, 1916, or sections 8(a)(1), 10(a)(1) or 10(b)(1) of the Shipping Act of 1984, civil penalties should be assessed, and, if so, against whom and in what amount; and

5. Whether, in the event Jorge Villena, Sea Trade Shipping and/or Cari-Cargo International, Inc. is found to have violated section 16, Initial Paragraph or section 18(b)(1) or (3) of the Shipping Act, 1916, or sections 8(a)(1), 10(a)(1) or 10(b)(1) of the Shipping Act of 1984 they should be ordered to cease and desist from violating the provisions of the Shipping Act of 1984.

It is further ordered, that the second ordering paragraph of the Order of Investigation and Hearing in this proceeding be modified as follows:

It is further Ordered, that Jorge Villena, Sea Trade Shipping and Cari-Cargo International, Inc. be named Respondents in this proceeding.

By the Commission,
Bruce A. Dombrowski,
Acting Secretary.

[FR Doc. 86-1713 Filed 1-24-86; 8:45 am]
BILLING CODE 6730-01-M

[Docket No. 86-3]

The Trans-Pacific Freight Conference of Japan Agreement, the Japan-Atlantic and Gulf Freight Conference Agreement, and the Japan-Puerto Rico and Virgin Islands Freight Conference Agreement; Modifications; Order To Show Cause

The Trans-Pacific Freight Conference of Japan, the Japan-Atlantic and Gulf Freight Conference, and the Japan-Puerto Rico and Virgin Islands Freight Conference agreements¹ each contain two provisions dealing with a member's right to take independent action which appear to be contrary to section 5(b)(8) of the Shipping Act of 1984 (46 U.S.C. app. 1740(b)(8)).

Article 13(a) of each agreement contains language which prohibits independent action on existing tariff rates if a service contract is being negotiated for the commodities covered

by the existing rates.² Article 13(b) of each agreement prohibits the chairman of the Conference from publishing a matching independent action if an original proposer of independent action withdraws or modifies the original proposal during the notice period.³

Section 5(b)(8) requires that each Conference agreement:

Provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff * * * and that the conference will include the new rate or service item in its tariff for use by that member * * * and by any other member that notifies the conference that it elects to adopt the independent rate or service item * * *.

It, thus, appears that the subject provision in Article 13(a) violates the provisions of section 5(b)(8) by preventing members from taking independent action in regard to a rate or service item required to be filed in a tariff during the pendency of service contract negotiations by another member. It, likewise, appears that the subject provision in Article 13(b) violates the provisions of section 5(b)(8) by preventing a member from taking independent action after the original proposer of independent action withdraws the proposal before its effective date even though the member following the independent action had met its statutory requirement of notifying the conference that it elects to adopt the original independent action. The cancellation of this independent action could create problems for following carriers who made rate commitments based on the proposed independent action.

On November 15, 1985 the Trans-Pacific Freight Conference of Japan and the Japan-Atlantic and Gulf Freight Conference filed modifications to Article 13(b) of their respective agreements to allow members to partially match or cancel an independent action.⁴ The

²The specific language in each is: "Independent action may not be taken by any member in the case of any matter, including a rate, charge or service item, associated with negotiating or providing any service contract * * *."

³The specific language in each is: "If at any time during the notice period the member should elect to withdraw or modify its independent action, it shall advise the Chairman in writing and the Chairman shall not include the rate or service item in the Conference tariff or tariffs for that member and shall not so include it for any other member."

⁴These modifications are designated Agreements 202-000150-081 and 202-003103-082. The language being added to each agreement is:

In the case where the initiating member of any other member taking a matching action elects to cancel the particular action in part, it shall advise the Chairman in writing and the Chairman shall not include the cancelled part in the Conference tariff or tariffs, it being understood that such partial

modifications appear to contain the same infirmity, discussed above, if the initiating member elects to partially cancel its independent action before it goes into effect and also appear to violate the provisions of section 5(b)(8).

Section 11(c) of the Shipping Act of 1984 (46 U.S.C. app 1710) provides that:

The Commission, * * * may investigate any . . . agreement that it believes may be in violation of this Act.

The Commission may by order disapprove, cancel, or modify any agreement filed under section 5(a) of this Act that operates in violation of this Act.

Therefore, it is ordered, that pursuant to section 11 of the Shipping Act of 1984 (46 U.S.C. app. 1710) the Trans-Pacific Freight Conference of Japan, the Japan-Atlantic and Gulf Freight Conference, and the Japan-Puerto Rico and Virgin Islands Freight Conference are ordered to show cause why Agreements No. 202-000150-080, 202-000150-081, 202-003103-081, 202-003103-082, and 202-008190-016 should not be found to be in violation of section 5(b)(8) of the Shipping Act of 1984 (46 U.S.C. app. 1704(b)(8)) by reason of the failure to comply with the mandatory independent action provision of this section of the Act, and, if found to be in violation, whether the agreements should be disapproved, cancelled, or modified by the Commission;⁵

It is further ordered, that this proceeding is limited to the submission of affidavits of fact and memoranda of law on the issue of the legality of the subject provisions of sections 13(a) and 13(b) of the agreements. Should any party feel that an evidentiary hearing is required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, a description of the evidence which would be adduced to prove those facts, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed no later than February 14, 1986. Any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene

cancellations shall be accomplished by the cancellation of any rate or service item according to transportation mode and/or on any qualifying conditions stated in the independent action and in the case of a partial cancellation by the initiating member, the Chairman shall not include the cancelled part for any other member.

⁵The Commission currently has pending a Notice of Proposed Rulemaking, Docket No. 85-7, which may require modifications to the independent action provisions of the subject agreements upon issuance of a final rule.

¹Trans-Pacific Freight Conference of Japan, Agreement No. 202-000150-080; Japan-Atlantic and Gulf Freight Conference, Agreement No. 202-003103-081; and Japan-Puerto Rico and Virgin Islands Freight Conference, Agreement No. 202-008190-016.

in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72) no later than February 14, 1986. If any such person believes that an evidentiary hearing is required, their request for hearing shall be filed as a separate pleading and shall accompany their petition to intervene;

It is further ordered, that the Trans-Pacific Conference of Japan, the Japan-Atlantic and Gulf Freight Conference, the Japan-Puerto Rico and Virgin Islands Freight Conference, and their respective members are named Respondents in this proceeding. Affidavits of fact and memorandum of law shall be filed by Respondents and any intervenors in support thereof by March 17, 1986;

It is further ordered, that the Commission's Bureau of Hearing Counsel be made a party to this proceeding. Reply affidavits and a memorandum of law shall be filed by the Bureau of Hearing Counsel and any other intervenors no later than April 16, 1986;

It is further ordered, that notice of this Show Cause Order be published in the Federal Register and that a copy thereof be served upon Respondents;

It is further ordered, that all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118) as well as being mailed directly to all parties of record;

Finally, it is ordered, that pursuant to the terms of Rule 61 (46 CFR 502.61) of the Commission's Rules of Practice and Procedure, the final decision of the Commission in this proceeding shall be issued by September 24, 1986.

By the Commission,
Bruce A. Dombrowski,
Acting Secretary.

[FR Doc. 86-1714 Filed 1-24-86; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank of Boston Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested person may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1986.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation*, Boston, Massachusetts; to engage *de novo* through the formation of a wholly-owned subsidiary, Boston International Data Services, Inc., Boston, Massachusetts, in data processing services and other incidental activities, pursuant to § 225.25(b)(7) of Regulation Y.

These activities are to be conducted principally in Europe.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86-1603 Filed 1-24-86; 8:45 am]
BILLING CODE 6210-01-M

Bank of New England Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval

under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1986.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New England Corporation*, Boston, Massachusetts; to acquire Mariner Mortgage Corporation, Providence, Rhode Island, and thereby engage in making and servicing mortgage and real estate loans that are primarily residential one-to-four family, pursuant to § 225.25(b)(1)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86-1604 Filed 1-24-86; 8:45 am]
BILLING CODE 6210-01-M

**Blissfield Bank Corp., et al.;
Formations of; Acquisitions by; and
Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 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 February 14, 1986.

A. Federal Reserve Bank of Chicago
(Franklin D. Dreyer, Vice President) 230
South LaSalle Street, Chicago, Illinois
60690:

1. *Blissfield Bank Corporation*,
Blissfield, Michigan; to become a bank
holding company by acquiring 100
percent of the voting shares of The
Blissfield State Bank, Blissfield,
Michigan.

B. Federal Reserve Bank of St. Louis
(Delmer P. Weisz, Vice President) 411
Locust Street, St. Louis, Missouri 63166:

1. *Liberty United Bancorp, Inc.*,
Louisville, Kentucky; to become a bank
holding company by acquiring 100
percent of the voting shares of The
Kentucky Bank and Trust Company,
Madisonville, Kentucky.

C. Federal Reserve Bank of Dallas
(Anthony J. Montelaro, Vice President)
400 South Akard Street, Dallas, Texas
75222:

1. *Overton Financial Corporation*,
Overton, Texas; to become a bank
holding company by acquiring 100
percent of the voting shares of First
State Bank, Overton, Texas.

2. *Ruston Bancshares, Inc.*, Ruston,
Louisiana; to acquire 100 percent of the
voting shares of Morehouse Bancshares,
Inc., Bastrop, Louisiana, thereby

indirectly acquiring The Bank of
Morehouse, Bastrop, Louisiana.

Board of Governors of the Federal Reserve
System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1605 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

**Farmers Banc Corp., et al.; Formations
of; Acquisitions by; and Mergers of
Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank of 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 February 13, 1986.

**A. Federal Reserve Bank of
Philadelphia** (Thomas K. Desch, Vice
President) 100 North 6th Street,
Philadelphia, Pennsylvania 19105:

1. *Farmers Banc Corp.*, Mullica Hill,
New Jersey; to become a bank holding
company by acquiring 100 percent of the
voting shares of The Farmers National
Bank of Mullica Hill, Mullica Hill, New
Jersey.

B. Federal Reserve Bank of Richmond
(Lloyd W. Bostian, Jr., Vice President)
701 East Byrd Street, Richmond,
Virginia 23261:

1. *Sovran Financial Corporation*,
Norfolk, Virginia; to acquire 100 percent
of the voting shares of Suburban Bank/
Delaware, Dover, Delaware. Comments
on this application must be received not
later than February 14, 1986.

C. Federal Reserve Bank of St. Louis
(Delmer P. Weisz, Vice President) 411
Locust Street, St. Louis, Missouri 63166:

1. *Baker Financial Corporation*,
Pocahontas, Arkansas; to become a
bank holding company by acquiring 80
percent of the voting shares of Planters
and Stockmen Bank, Pocahontas,
Arkansas.

Board of Governors of the Federal Reserve
System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1606 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

**First National Bankshares of Sheridan,
Inc.; Acquisition of Company Engaged
in Permissible Nonbanking Activities**

The organization listed in this notice has applied under § 225.23 (a) (2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) (2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 14, 1986.

**A. Federal Reserve Bank of Kansas
City** (Thomas M. Hoenig, Vice President)

925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National Bankshares of Sheridan, Inc.*, Sheridan, Wyoming; to acquire Rawlings Insurance Agency, Inc., Ranchester, Wyoming, and thereby engage in general insurance activities in a place with a population not exceeding 5,000, pursuant to section 4(C)(8)(C)(i) of the Act.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1607 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

First National Cincinnati Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must 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 February 12, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First National Cincinnati Corporation*, Cincinnati, Ohio; to acquire 100 percent of the voting shares of New Bancshares, Inc., Newport, Kentucky, thereby indirectly acquiring Newport National Bank, Newport, Kentucky. Comments on this application must be received not later than February 13, 1986.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President)

701 East Byrd Street, Richmond, Virginia 23261:

1. *United Virginia Bankshares Incorporated*, Richmond, Virginia; to acquire 100 percent of the voting shares of Bethesda Bancorporation, Bethesda, Maryland, thereby indirectly acquiring Bank of Bethesda, Bethesda, Maryland.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Farmers and Merchants Bancorp, Inc.*, Dover, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers and Merchants Bank of Bumpus Mills, Bumpus Mills, Tennessee.

D. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Central Wisconsin Bankshares, Inc.*, Wausau, Wisconsin; to acquire at least 80 percent of the voting shares of Valley View Bank, La Crosse, Wisconsin. Comments on this application must be received not later than February 10, 1986.

2. *F & M Bancorporation, Inc.*, Kaukauna, Wisconsin; to acquire at least 80 percent of the voting shares of Farmers State Bank of Potter, Potter, Wisconsin.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Kaufman Bancshares, Inc.*, Kaufman, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of BancTexas Kaufman, N.A., Kaufman, Texas.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1608 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

Mellon Bank Corp.; 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 as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding 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 February 7, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon Bank Corporation*, Pittsburgh, Pennsylvania; to acquire Fidata Systems Incorporated, Boston, Massachusetts and Fidata Trust Company—Massachusetts, Boston, Massachusetts, and thereby engage in providing data processing and data transmission services, including a variety of mutual fund recordkeeping and shareholder servicing functions to their customers, primarily mutual fund groups, as well as engage in the activities of transfer agent, registrar, dividend disbursing agent and related functions, pursuant to 225.25 (b)(3) and (7) of Regulation Y, respectively. The nonbank offices to be acquired are located at 100 Summer Street, Boston, Massachusetts and 10 Post Office Square, Boston, Massachusetts.

2. *Mellon Bank Corporation*, Pittsburgh, Pennsylvania; to acquire Fidata Securities Management, Inc. (FSMI), Pittsburgh, Pennsylvania, and Fidata Securities Services, Inc. (FSSI), Pittsburgh, Pennsylvania, and thereby engage in providing securities transfer and shareholder recordkeeping services, act as transfer agent, paying agent,

dividend disbursing agent, or securities clearing agent and engage in related functions, pursuant to § 225.25(b) (3) and (7) of Regulation Y, respectively. The nonbank offices to be acquired are located at FSMI's principal offices in Ft. Lee and Hackensack, New Jersey. Regional offices in Miami, Florida; Minneapolis, Minnesota; and San Francisco, California. FSSI's office is located at 4 Station Square, Pittsburgh, Pennsylvania.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1609 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

Mountain Bancorp Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulations Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mountain Bancorp Inc.*, West Liberty, Kentucky; to engage *de novo* through its subsidiary, Consumer Lending Corporation, West Liberty, Kentucky, in the consumer finance business, pursuant to § 225.25(b)(1) of Regulation Y. These activities would be conducted in Morgan, Johnson, Lawrence, Elliott, Rowan, Menifee, Wolfe and Magoffin Counties; all of which are located in Kentucky.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1599 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

Oxford Bank Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must 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 February 12, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60609:

1. *Oxford Bank Corporation*, Oxford, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Oxford, Oxford, Indiana.

2. *PSB Bankcorp*, Francesville, Indiana; to become a bank holding company by acquiring 80 percent or more of the voting shares of Peoples State Bank of Francesville, Francesville, Indiana.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Longview Bancshares, Inc.*, Longview, Texas; to acquire 100 percent of the voting shares of The First State Bank, Big Sandy, Texas.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1600 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

Resource Companies, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would

not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1986.

A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Resource Companies, Inc.*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Resource Capital Advisers, Inc., Minneapolis, Minnesota, in providing portfolio investment advice to any other person, pursuant to § 225.25(b)(4)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1601 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

National Bank of Canada; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound

banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any question of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 7, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *National Bank of Canada*, Montreal, Canada; to acquire Mercantile Canda Corporation, Dallas, Texas, and thereby engage in the servicing and making of commercial loans.

Board of Governors of the Federal Reserve System, January 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 1861 Filed 1-24-86; 9:21 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Program Announcement and Notice of Availability of Funds for Fiscal Year 1986; Cooperative Agreements for Acquired Immunodeficiency Syndrome (AIDS); Health Education and Risk Reduction Programs

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1986 for cooperative agreements for acquired immunodeficiency syndrome (AIDS) health education and risk reduction programs in the following four specific areas: I. State-Based AIDS Projects for Community Health Education and Risk Reduction, II. Augmentation and Evaluation of Health Education and Risk Reduction Programs in Communities with High Incidence of AIDS, III. Community-Based Demonstration Projects for AIDS Prevention and Risk Reduction, IV. Innovative Projects for AIDS Risk Reduction.

Authority

These projects are authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as

amended, section 311(b) of the Public Health Service Act (42 U.S.C. 243(b)), as amended, and section 318 of the Public Health Service Act (42 U.S.C. 247c), as amended. The Catalog of Federal Domestic Assistance Number is 13.118.

Program Background and Objectives

The acquired immunodeficiency syndrome continues to grow as a major public health problem in the United States. Through December 1985, more than 15,400 cases have been reported and more than 7,800 persons have died from AIDS as defined by the CDC surveillance case definition:

1. Presence of reliably diagnosed disease at least moderately indicative of underlying cellular immune deficiency (e.g., Kaposi's sarcoma in patients who are less than 60 years of age or patients with *Pneumocystis carinii* pneumonia or other opportunistic infections; and

2. Absence of known causes of underlying immune deficiency and of any other reduced resistance reported to be associated with the disease.

Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus (HTLV-III/LAV), the virus that causes AIDS, is transmitted sexually, through contaminated needles, through blood and blood components, and perinatally. A serologic test for HTLV-III/LVA antibody has been developed, and its use on donated blood and plasma has decreased the risk of AIDS for transfusion recipients and hemophiliacs. These two groups account for 3 percent of reported AIDS cases. Without a vaccine or therapy, the basis for AIDS prevention in other groups is a thorough understanding of the risk factors for HTLV-III/LAV infection and efforts to change the behavior which contribute to those factors. Significant gaps still exist in the understanding of risk factors for HTLV-III/LAV infection, and the behaviors which contribute to those factors are complex and difficult to change.

Specific Program Areas of Assistance

I. State-Based AIDS Projects for Community Health Education and Risk Reduction

A. Purpose

The purpose of the AIDS Projects for Community Health Education and Risk Reduction is to assist States in developing and conducting programs of health education and risk reduction for AIDS. The specific purpose of the first year is to assist States in building their capacity to deliver health education and risk reduction programs by providing the impetus to appraise community needs

and resources related to the AIDS problem, to development effective community-based organizations to implement the program, and to begin actual implementation.

B. Cooperative Activities

1. *Recipient Activities.* a. Assess community needs and resources concerning AIDS prevention among high-risk groups and in the general population;

b. Determine the prevalence of HTLV-III/LAV infection in groups at risk and in the general population;

c. Determine the levels of disease-related knowledge, attitudes, and behaviors among persons at risk of infection;

d. Determine the levels of disease-related knowledge in the general population, fears and beliefs about the methods of transmission, and perceptions about people at risk or with the disease;

e. Build a core capacity, which includes the organized collaboration of community level resources, directed toward preventing transmission of HTLV-III/LAV infection; and

f. Based on a strategy developed from these assessment and organizational activities, begin using the core capability to: (1) Deliver Health Education/Risk Reduction services to prevent the transmission of HTLV-III/LAV infection that are specifically targeted to groups and individuals known to have risk factors for AIDS; and

(2) Deliver health education messages to the general public to clarify dominant misunderstandings, alleviate unwarranted fears, and clarify misunderstandings and misconceptions about AIDS victims and persons at risk for HTLV-III/LAV infection.

2. *Centers for Disease Control Activities.* a. Provide technical assistance and training to health department and community organization personnel;

b. Participate in the analysis of information and data gathered from program activities; and

c. Develop prototype materials and uniform evaluation guidelines and instruments.

C. Eligible Applicants

Eligible applicants are the official public health agencies of States, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa. Applicants for this project may also be eligible to apply for

assistance under Part II of this announcement entitled *PROJECTS FOR AUGMENTATION AND EVALUATION OF ESTABLISHED HEALTH EDUCATION/RISK REDUCTION PROGRAMS IN COMMUNITIES WITH HIGH INCIDENCE OF AIDS*. However, an applicant will not be funded for both.

D. Availability for Funds

Approximately \$5,170,000 will be available in Fiscal Year 1986 to fund up to 45 new cooperative agreements ranging from approximately \$75,000 to \$150,000 with an average award of \$115,000. It is expected that the initial cooperative agreements will begin on or about April 15, 1986, and will be funded for 12 months in a 1 to 5-year project period. Funding estimates outlined above may vary and are subject to change.

E. Review and Evaluation Criteria

1. The initial application for a project period will be reviewed and evaluated according to the following criteria:

a. The applicant's understanding of AIDS prevention activities and the purpose of the cooperative agreement;

b. The establishment of objectives which are consistent with the stated purpose of the cooperative agreement, and which are specific, measurable, and time-phased;

c. The quality of the applicant's proposed plan to appraise community needs and resources pertinent to the AIDS problem;

d. Evidence of the applicant's commitment to generate community cooperation and support for AIDS prevention activities and to maintain close collaboration and working relationships with community-based organizations serving the interests of groups at risk for AIDS;

e. The quality of the applicant's preliminary plan of action which would be the framework for implementation once the precise community needs and resources are identified;

f. The quality of the applicant's proposed plan to develop a long-range core capacity to prevent the transmission of HTLV-III/LAV infections;

g. The quality of the applicant's plan to determine prevalence of HTLV-III/LAV infection in groups at risk and in the general population;

h. The quality of an evaluation plan which specifies the method and instruments of measurement to be used;

i. The extent to which the budget is reasonable and consistent with the intended use of the cooperative agreement funds;

j. The assurance that the confidentiality of all information obtained related to clinical laboratory results, medical, or counseling information on individuals and/or studies with personal identifiers will be maintained; and

k. The size, qualifications, and time allocation of proposed staff and availability of equipment and facilities to be used during the project.

2. Continuation awards within the project period will be made on the basis of the following criteria:

a. The accomplishments of the current budget period show that the applicant is meeting its objectives;

b. The objectives for the new budget period are realistic, specific, and measurable;

c. The methods described will clearly lead to achievement of these objectives;

d. The evaluation plan will allow management to monitor whether the methods are effective; and

e. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

II. *Projects for Augmentation and Evaluation of Established Health Education/Risk Reduction Programs in Communities With a High Incidence of AIDS*

A. Purpose

The purpose of this program is to assist communities that have a high incidence of AIDS and an established community-based health education/risk reduction program to intensify their prevention efforts and to implement evaluation mechanisms to monitor their effectiveness in reducing transmission of HTLV-III/LAV.

B. Cooperative Activities

1. *Recipient Activities.* a. Determine the prevalence of HTLV-III/LAV infection in groups at risk and in the general population;

b. Determine the levels of disease-related knowledge, attitudes, and behaviors among persons at risk of infection;

c. Provide targeted education for groups and individuals at high risk;

d. Conduct educational activities intended to inform individuals at high risk of what actions to take to remain uninfected and prevent transmission to others, if infected;

e. Provide risk reduction counseling services which will motivate individuals at high risk to make needed behavioral changes and assist them in acquiring the

assertiveness and interpersonal negotiating skills needed to implement and carry through adopted behavioral changes;

f. Provide AIDS health education and information to the general public to address unwarranted fears, misbeliefs about the methods of transmission, and errant perceptions about people at risk or with the disease;

g. Assist the community in organizing itself as needed to reinforce and support the lifestyle changes that individuals are trying to make and maintain; and

h. Evaluate programmatic efforts to prevent the spread of HTLV-III/LAV infection and change risk-associated behaviors.

2. *CDC Activities.* a. Provide consultation and technical assistance in planning, operating and evaluating prevention activities;

b. Provide up-to-date scientific information regarding national program strategy for the prevention of AIDS and the transmission of HTLV-III/LAV infections;

c. Refine risk reduction guidelines and describe any methods developed to monitor progress that appear workable and effective; and

d. Facilitate the transfer of information and technology to other States and communities.

C. Eligible Applicants

Eligible applicants are the official public health agencies of States, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa which, as of the date of publication of this notice, have reported 100 or more cases of AIDS meeting the CDC surveillance case definition as set forth above, and local governments which have reported 1,000 or more cases. States which are eligible for this project can also apply for assistance under Part I of this announcement entitled *STATE-BASED AIDS PROJECTS FOR COMMUNITY HEALTH EDUCATION AND RISK REDUCTION*. However, an applicant will not be funded for both.

D. Availability of Funds

Approximately \$5,700,000 will be available in Fiscal Year 1986 to fund 15 to 25 new cooperative agreements ranging from \$200,000 to \$400,000 with an average award of \$285,000. It is expected that the initial cooperative agreements will begin on or about April 15, 1986, and will be funded for 12 months in a 1 to 5-year project period.

Funding estimates outlined above may vary and are subject to change.

E. Review and Evaluation Criteria

1. The initial application for a project period will be reviewed and evaluated according to the following criteria:

a. Documentation of 100 or more reported cases of AIDS meeting the CDC surveillance case definition, if the applicant is a State; 1,000 or more cases where the applicant is a local government;

b. The applicant's understanding of AIDS prevention activities and the purpose of the cooperative agreement;

c. The establishment of objectives which are consistent with the stated purpose of the cooperative agreement, and which are specific, measurable, and time-phased;

d. The quality of the applicant's current methods for determining the prevalence of HTLV-III/LAV infection in groups at risk and in the general population or plans to monitor the prevalence of HTLV-III/LAV infection if this effort is not already underway;

e. The quality of the applicant's efforts to determine the levels of disease related knowledge, attitudes, and behaviors among persons at risk of infection or plans to make these determinations if the activity is not already underway;

f. The quality of the applicant's plans for community organizational assistance that will reinforce and support behavior change designed to persuade individuals to remain uninfected and prevent transmission to other, if infected;

g. The details of how the applicant plans to build upon and expand the current program of health education and risk reduction augment activities to prevent the transmission of HTLV-III/LAV infection;

h. The quality of the plan to provide risk reduction counseling to motivate behavior change and provide people assistance with the means and skills they need to accomplish it;

i. Evidence of the ability of the applicant to generate community cooperation and support for AIDS prevention activities and maintain close collaboration and working relationships with community-based organizations serving the interests of groups at risk for AIDS;

j. The quality of an evaluation plan which specifies appropriate methods and instruments of measurement to be used;

k. The extent to which the budget is reasonable and consistent with the intended use of cooperative agreement funds;

l. The assurance that the confidentiality of all information obtained related to clinical laboratory results, medical, or counseling information on individuals and/or studies with personal identifiers will be maintained; and

m. The size, qualifications, and time allocation of proposed staff and availability of equipment and facilities to be used during the project.

2. Continuation awards within the project period will be made on the basis of the following criteria:

a. The accomplishments of the current budget period show that the applicant is meeting its objectives;

b. The objectives for the new budget period are realistic, specific, and measurable;

c. The methods described will clearly lead to achievement of these objectives;

d. The evaluation plan will allow management to monitor whether the methods are effective; and

e. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

III. Community-Based Demonstration Projects for AIDS Prevention and Risk Reduction

A. Purpose

The purpose of the comprehensive community-based demonstration projects for AIDS prevention and risk-reduction is to design, implement, and evaluate intensive programs in well-defined geographic/political subdivisions to serve as national models to prevent transmission of HTLV-III/LAV infection. These demonstration areas will carry out the broadest possible spectrum of available prevention methodology, test the practicality of those new and innovative methods developed there and elsewhere, document all activities and results to facilities nationwide implementation of workable approaches, and participate in the training of personnel on a national basis.

B. Cooperative Activities

1. *Recipient Activities.* a. Design and conduct seroprevalence studies to determine the prevalence of HTLV-III/LAV infection in groups at risk and in the general population;

b. Design and conduct studies to determine current knowledge of HTLV-III/LAV infection and attitudes concerning AIDS among groups at risk as well as baseline data on risk-

associated behaviors of individuals within these groups;

c. Develop and distribute written and audiovisual materials with accurate information on AIDS, risk factors, prevention guidelines, and community resources available;

d. Promote and carry out multifaceted educational programs intended to persuade individuals to take action to remain uninfected and prevent transmission to others, if infected, which involve developing, promoting, and conducting programs, presentations, group discussions, and other activities designed to facilitate awareness of AIDS risk situations and support for prevention measures;

e. Promote and carry out programs to counsel seropositives and assure the referral of their recent sex partners for testing and counseling, and to counsel seronegative individuals at high risk for AIDS;

f. Repeat studies to document whether and to what extent changes have occurred in the understanding of AIDS risk factors and risk-associated behaviors;

g. Repeat seroprevalence studies to monitor changes in the prevalence of HTLV-III/LAV infection in groups at risk;

h. Monitor trends in other illnesses which are sensitive indicators of behavior change in populations at risk (e.g., reportable sexually transmitted infections, hepatitis B, and non-A, non-B hepatitis);

i. Evaluate and revise programmatic efforts in reaction to changes in behavior and infection with HTLV-III/LAV;

j. Maintain the programmatic and budgetary flexibility to respond, on short notice, to requests from CDC to test the feasibility of newly developed control strategies, or to conduct short-term formal studies to duplicate or examine the relevance of potentially important program findings from AIDS Innovative Risk Reduction cooperative agreement recipients, program areas, or other Community-Based Demonstration sites; and

k. Provide information and insight for use in the development of curricula and other learning opportunities to train personnel from other programs in the State or locality.

2. Centers for Disease Control Activities. a. Collaborate in the design of the initial and followup seroprevalence studies for HTLV-III/LAV infection in groups at risk and in the general population;

b. Collaborate in the design of the initial and followup studies of individuals at risk, and provide

consultation regarding data-collection instruments and procedures;

c. Participate in the analysis of information gathered from studies;

d. Provide up-to-date scientific information regarding risk/protective factors for AIDS, sensitivity and specificity of serologic tests, and national program for preventing the transmission of HTLV-III/LAV infection;

e. Provide on-site technical involvement in planning, operating, and evaluating prevention activities;

f. Develop course curricula, training materials, job aids, and other learning opportunities to train personnel from other programs in the State or locality; and

g. Analyze the findings of AIDS innovative Risk Reduction projects, program areas, and other community-based demonstration sites, and identify control strategies requiring further testing and refinement.

C. Eligible Applicants

Eligible applicants are the official public health agencies of State and local governments, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa.

D Availability of Funds

Approximately \$4,000,000 will be available in Fiscal Year 1986 to fund two to four new cooperative agreements totaling approximately \$3,300,000 ranging from approximately \$200,000 to \$1,000,000 with an average award of \$800,000, and to extend up to four continuation cooperative agreements totaling approximately \$700,000 to adjust their anniversary dates to coincide with the new awards under this announcement. It is expected that new cooperative agreements will begin on or about April 15, 1986, and will be funded for 12 months in a 1 to 5-year project period. Funding estimates outlined above may vary and are subject to change.

E. Review and Evaluation Criteria

1. The initial application for a project period will be reviewed and evaluated according to the following criteria:

a. The applicant's understanding of AIDS prevention activities and the purpose of the cooperative agreement;

b. The quality and scope of the applicant's current activities in AIDS information and education;

c. The establishment of objectives which are consistent with the stated purpose of the cooperative agreement,

and which are specific, measurable, and time-phased;

d. Evidence of the soundness and potential operational impact of the overall approach;

e. The quality of the applicant's proposed plan to determine current prevalence and knowledge of HTLV-III/LAV infection in groups at risk as well as how the applicant will assess current risk-associated behavior of individuals with these groups;

f. Evidence of the ability of the applicant to generate community cooperation and support for AIDS prevention activities and to maintain close collaboration and working relationships with community-based organizations serving the interest of groups at risk for AIDS;

g. The quality of the applicant's proposed plan to promote behaviors designed to persuade individuals to remain uninfected, and prevent transmission to others, if infected;

h. The quality of the plan to provide risk reduction counseling to motivate behavior change and provide individuals assistance with the means and skills they need to accomplish it;

i. The quality of the plans for community organizational assistance that will reinforce behavior change;

j. The quality of an evaluation plan which specifies the method and instruments of measurement to be used;

k. The extent to which the budget is reasonable and consistent with the intended use of cooperative agreement funds;

l. The assurance that the confidentiality of all information obtained related to clinical laboratory results, medical, or counseling information on individuals and/or studies with personal identifiers will be maintained;

m. The commitment to maintain the programmatic and budgetary flexibility to respond, on short notice, to requests from CDC to test the feasibility of newly developed control strategies, or to conduct short-term formal studies to duplicate or examine the relevance of potentially important program findings from AIDS Innovative Risk Reduction cooperative agreement recipients, program areas, or other Community-Based Demonstration sites;

n. The applicant's plan to participate in technology transfer to personnel from other States and local communities;

o. The size, qualifications, and time allocation of proposed staff and availability of equipment and facilities to be used during the project; and

p. the ability of the applicant to identify experienced, qualified

personnel, and a satisfactory description of how they will supervise, coordinate, and operate the program.

2. Continuation awards within the project period will be made on the basis of the following criteria:

a. The accomplishments of the current budget period show that the applicant is meeting its objectives;

b. The objectives for the new budget period are realistic, specific, and measurable;

c. The methods described will clearly lead to achievement of these objectives;

d. The evaluation plan will allow management to monitor whether the methods are effective; and

e. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

IV. Innovative Projects for AIDS Risk Reduction

No new applications are being accepted for innovative projects for risk reduction. It is expected that up to eight cooperative agreements totaling up to approximately \$1,900,000 will be awarded in Fiscal Year 1986 from the applications received in response to the Program Announcement published in the *Federal Register* (50 FR 30298) on July 25, 1985. Awards are expected to range from approximately \$85,000 to \$280,000. The initial cooperative agreements will be funded for 12 months in a 1 to 3-year project period. Funding estimates outlined above may vary and are subject to change.

Information Applicable to Cooperative Agreement Programs in Parts I, II, III, and IV Above

Content of Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions

The current lack of therapeutic or vaccine methods to control the spread of HTLV-III/LAV infection and AIDS requires the promotion of sexual and lifestyle behaviors for individuals which will reduce their risk of acquiring and spreading the virus. Behavioral science research suggests that expecting people to permanently alter any set of behaviors affecting their health is unrealistic unless the educational message provides acceptable alternatives to the behaviors creating the risk. Consequently, AIDS risk reduction efforts have focused on the promotion of responsible sex practices for individuals such as gay and bisexual men, for whom sexual activity is an important factor of risk in acquiring or spreading HTLV-III/LAV.

The adoption of "safer sex" practices is a practical concept of AIDS risk reduction and is being suggested as a strategy intended to minimize the spread of HTLV-III/LAV infection among sexually active individuals, including gay and bisexual men. Implementing programs to promote a "safer sex" risk reduction strategy may involve supporting the communication of suggestions using candid terms, some of which may be offensive to society at large. The Centers for Disease Control (CDC) is answerable for the use of Federal funds and broad support is vital to its public health mission. CDC also has an obligation to take actions designed to control the spread of HTLV-III/LAV. This guidance is meant to promote such actions, and to require local review panels to consider the bounds of explicitness believed needed to communicate an effective message to those for whom it is intended.

1. *Basic Principles.* a. Language used in written materials (i.e., pamphlets, brochures, fliers), audiovisual materials (i.e., motion pictures and video tapes), and pictorials (i.e., posters and similar educational materials using photographs, slides, drawings, or paintings) to explain "safer sex" practices and/or to contrast them with "unsafe sex" practices concerning AIDS should use terms or descriptors necessary for the target audience to understand the messages.

b. Such terms or descriptors used should be those which a reasonable person would conclude should be understood by a broad cross-section of educated adults in society, or which when used to communicate with a specific group, such as gay men, about high risk sexual practices, would be judged by a reasonable person to be unoffensive to most educated adults beyond that group.

c. The language of items in questionnaires or survey instruments which will be administered in any fashion to any persons should use terms to communicate the information needed which would be understood by a broad cross-section of educated adults in society but which a reasonable person would not judge to be offensive to such people.

d. Audiovisual materials and pictorials in addition should communicate risk reduction messages by inference rather than through any display of the anogenital area of the body or overt depiction of the performance of "safer sex" or "unsafe sex" practices.

e. Educational group sessions of any size should avoid activities in which attendees participate in sexually

suggestive physical contact or actual sexual practices.

2. *Program Review Panel.* a. Prospective cooperative agreement recipients will be required to establish a program review panel. This panel, guided by the CDC Basic Principles in conjunction with prevailing community standards, will review and approve all written materials, pictorials, and audiovisuals, questionnaires or survey instruments, and proposed educational group session activities to be used under the project plan. This panel is intended to review materials only and should not be empowered either to evaluate the proposal as a whole or to replace any other internal review panel or procedure of the local governmental jurisdiction. Specifically, applicants for cooperative agreements will be required to:

(1) Identify a panel of no less than five persons representing a reasonable cross-section of the general community, not drawn predominantly from the target group or groups to whom the written materials, pictorials, audiovisuals, questionnaires, survey instruments, or educational group sessions are directed; and

(2) Provide to CDC a letter or memorandum from the proposed project director, countersigned by the business office, which includes:

(a) Concurrence with this guidance and assurance that its provisions will be observed;

(b) The identity of proposed members of the Program Review Panel, including their names, occupations, and any organizational affiliations that were considered in their selection for the Panel;

(c) If the applicant is not an official public health agency, a written concurrence on the composition of the Program Review Panel by the Director of the State or local health department official of the agency with appropriate jurisdiction for the locality.

b. When a cooperative agreement is awarded, the recipient will:

(1) Convene the Program Review Panel and present for its assessment actual copies of written materials, pictorials, and audiovisuals to be used and questionnaires of survey instruments;

(2) Provide for assessment by the Program Review Panel draft text, scripts, or detailed descriptions for written materials, pictorials, or audiovisuals to be used and questionnaires or survey instruments;

(3) Provide detailed plans for educational group session activities to the Program Review Panel for assessment;

(4) Provide to CDC a statement signed by all members of the Program Review Panel which itemizes their majority vote approval or disapproval of all proposed written materials, audiovisual materials and pictorials, of questionnaires or survey instruments, and of plans for educational group session activities submitted to them for assessment as part of the proposed project plan.

The CDC award of funds for approved applications will restrict the expenditure of funds related to the ultimate program use of the materials or actual implementation of questionnaires or survey instruments or activities until the signed statement of the Program Review Panel is received.

Information Applicable to Cooperative Agreement Programs in Parts I, II, and III Above

A. Confidentiality

In accordance with section 318(e)(5) of the Public Health Service Act (42 U.S.C. 247c(e)(5)), all information obtained in connection with the examination, care, or services provided to any individual under any program which is being carried out with a cooperative agreement made under this announcement shall not, without such individual's consent, be disclosed except as may be necessary to provide services to him or as may be required by a law of a State or political subdivision of a State. Information derived from any such program may be disclosed (A) in summary, statistical, or other form, or (B) for clinical or research purposes, but only if the identity of the individuals diagnosed or provided care under such program is not disclosed.

B. Use of Funds

1. Funds may be expended for the written materials, pictorials, audiovisuals, questionnaires or survey instruments, and educational group sessions related to AIDS risk reduction if approved in accordance with guidance provided above the subpart entitled *Content of Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions*;

2. Funds may be used to support personnel and purchase supplies and services directly related to planning, organizing, and conducting AIDS projects described in Parts I through III of this announcement;

3. Requests for direct assistance (i.e., "in lieu of cash") for personnel, supplies, and other forms of direct assistance will be considered;

4. Funds shall not be used for purchasing computers, office equipment and furniture, and renting or leasing

office space unless specifically approved; and

5. Funds may not be used to support construction or renovation costs.

C. Reporting Requirements

Progress reports are required on a quarterly basis and are due 30 days after the end of each quarter. The fourth quarter report will include a summary of the year's activities. Annual financial status reports are required no later than 90 days after the end of each budget period. Final financial status and performance reports are required 90 days after the end of a project period.

D. Recipient Financial Participation

This program has no statutory cost sharing formula. No specific matching funds are required; however, the application should include data on the applicant's contribution to the overall program costs.

E. Special Guidelines for Application Preparation

There are four separate and distinct project areas set forth in this announcement. For Parts I through III, a *single application document* shall be submitted, but a *separate application narrative and budget request* is required for each project area for which assistance is requested. Consolidated applications which do not contain separate narrative and budget requests will not be evaluated and will be returned to the applicant. Award of funds may be on a consolidated basis with separate budgets for each Part. Additionally, funding decisions for applicants applying for assistance under more than one Part of this announcement will be based on the extent to which an applicant effectively described the efficient consolidation and coordination of Federal, State, and other AIDS resources, including resources requested under this announcement.

Applications

A. Application Content

1. *Compliance with Program Review Panel Requirement.* Applications which include written materials, pictorials, audiovisuals, questionnaires or survey instruments, or group educational sessions related to AIDS risk reduction must contain the documentation required in paragraph 2.a under the subpart of this announcement entitled *Content of Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments and Education Sessions*;

2. *Initial Application.* The initial application for a new project period must include a narrative for *each Part* of

this announcement under which funds are requested which details the following:

a. The background and need for project support, including information that relates to factors by which the applications will be evaluated;

b. The objectives of the proposed project which are consistent with the purpose of the cooperative agreement and which are measurable and time-phased;

c. The methods and activities which will be undertaken to accomplish the objectives;

d. The methods which will be used to evaluate the success of the project;

e. A budget and accompanying justification consistent with the purpose and objectives of the project; and

f. Any other information that will support the request for assistance.

3. *Continued Funding.* An application for continuing funding of these activities within an approved project period should contain the following information:

a. Progress report on activities performed and results achieved during the prior budget period;

b. Short-term objectives for the new budget period;

c. A description of the method of operation that will be used to accomplish any new objectives;

d. An evaluation plan which will help determine if the methods are effective and the objectives are being achieved; and

e. A budget and accompanying justification consistent with the purpose and objectives of the project.

4. *Index.* Each application will contain an index specifically directing the reviewers to each section of the application that applies to the various Parts of the announcement.

B. Application Submission and Deadline

The original and two copies of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, on or before March 3, 1986.

1. *Deadline.* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group.

(Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial

carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications.* Applications which do not meet the criteria in l. a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

C. Other Submission and Review Requirements

Applications are subject to review as governed by the regulations (42 CFR Part 1322, as amended, and Part 123) implementing the National Health Planning and Resources Development Act of 1974, as amended. Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Leo A. Sanders, Grants Management Officer, or Nancy Bridger, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6575. Technical assistance may be obtained from Willard Cates, M.D., M.P.H., Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329-2552 or FTS 236-2552.

Dated: January 17, 1986.

Robert L. Foster,

Acting Director, Office of Program Support,
Centers for Disease Control.

[FR Doc. 86-1765 Filed 1-24-86; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Medical Radiation Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Medical Radiation Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 [5 U.S.C. App. I]).

DATE: Authority for this committee will expire on January 5, 1988, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: January 17, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 86-1610 Filed 1-24-86; 8:45 am]

BILLING CODE 4160-01-M

Vaccines and Related Biological Products Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Vaccines and Related Biological Products Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 [5 U.S.C. App. I]).

DATE: Authority for this committee will expire on December 31, 1987, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: January 17, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 86-1612 Filed 1-24-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N-0185]

Chloramphenicol Oral Solution; Withdrawal of Approval of NADA's

Correction

In FR Doc. 86-685 appearing on page 1441 in the issue of Monday, January 13, 1986, make the following corrections: In the second column, in the third complete paragraph, in the third line, "360(e)" should read "360b(e)"; in the fourteenth line, "January 23, 1980" should read "January 23, 1986".

BILLING CODE 1505-01-M

Health Care Financing Administration

Medicaid Program; Notice of Hearing; Reconsideration of Disapproval of an Arkansas State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on March 19, 1986 in Dallas, Texas to reconsider our decision to disapprove the Arkansas State Plan Amendment 85-16.

DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk, February 11, 1986.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Arkansas State Plan Amendment 85-16.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Arkansas' proposed plan which would provide for an increase in the dispensing fee in the State's Prescribed Drug Program from \$3.87 to \$4.01 per prescription to be effective July 1, 1985 violates 1902(a)(30) of the Social Security Act.

Arkansas' proposed increase is provided for in Arkansas legislation passed in 1983 which allows the dispensing fee to be based upon the most recent cost of dispensing survey and adjusted on July 1 of each year by the percent change in the Consumer Price Index.

Act 518 of the 74th General Assembly of the State of Arkansas (passed into law on March 17, 1983) states in section 3 that the method of determining the dispensing fee is to be the result of a cost dispensing survey.

The most recent cost of dispensing survey was conducted in 1983 by Myers and Stauffer under contract with the State. Based on this survey and other factors, the State submitted Arkansas State Plan Amendment No. 84-11 which proposed to increase the dispensing fee from \$3.58 to \$3.87 effective July 1, 1984. On November 21, 1984 Arkansas was advised by the Administrator of the Health Care Financing Administration (HCFA) that State Plan Amendment No. 84-11 was disapproved because in HCFA's opinion the cost finding methodology used by the consultants was questionable because it inflated the cost of the pharmacy area and certain salaries and, therefore, the cost of the dispensing fee.

Arkansas' current request for an increase in the dispensing fee in State Plan Amendment No. 85-16 is based on the same survey used for the dispensing fee increase in State Plan Amendment No. 84-11 which was disapproved. Therefore, HCFA disapproved State Plan Amendment 85-16, because it determined the plan is in violation of section 1902(a)(30) of the Social Security Act, which states in part, "A State plan for medical assistance must . . . assure that payments are consistent with efficiency, economy, and quality of care."

The notice to Arkansas announcing an administrative hearing to reconsider our disapproval of portions of its State plan amendment reads as follows:

Mr. Walt Patterson,
Deputy Director, Division of Economic and Medical Services, P.O. Box 1437, Little Rock, Arkansas 72203.

Dear Mr. Patterson: This is to advise you that your request for reconsideration of the decision to disapprove Arkansas State Plan Amendment No. 85-16 was received on December 26, 1985. Arkansas State Plan Amendment No. 85-16 would provide for an increase in the dispensing fee in the State's Prescribed Drug Program from \$3.87 to \$4.01 per prescription to be effective on July 1, 1985. You have requested a reconsideration of whether this plan amendment violates section 1902(a)(30) of the Social Security Act.

I am scheduling a hearing on your request to be held March 19, 1986 at 10:00 a.m. in

Room 1915, 2535 Main Tower Building, Dallas, Texas. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,

C. McClain Haddow,

Acting Administrator.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: January 22, 1986.

C. McClain Haddow

Acting Administrator, Health Care Financing Administration

[FR Doc. 86-1716 Filed 1-24-86; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on February 20-21, 1986, Building 31, C Wing, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The meeting will be open to the public from 1:00 p.m. to recess on February 20, and from 9:00 a.m. to adjournment on February 21, for discussion and review of the Division budget and review of concepts for grants and contracts and an overview of the Chemical and Physical Carcinogenesis Program. Attendance by the public will be limited to space available.

The Board of Scientific Counselors meeting will be closed to the public from 9:00 a.m. to approximately 1:00 p.m. on February 20, 1986, in accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Winifred Lumsden, Committee Management Officer, National Cancer

Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-8927) will furnish substantive program information.

Dated: January 21, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-1630 Filed 1-24-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, February 6-7, 1986, Building 31, 6th Floor, "C" Wing, Conference Room 10, Bethesda, Maryland 20892. The meeting will be open to the public on February 6, 1986, from 8:30 a.m. until 5:00 p.m., and again on February 7, 1986, from 8:30 a.m. until adjournment, to review program plans, contract recompletions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 6, 1986, from 5:30 p.m. to recess, for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A-06, National Institutes of Health, Bethesda, Maryland 20892 (301-496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A-52, National Institutes of Health,

Bethesda, Maryland 20892 (301-496-4291) will furnish substantive program information.

Dated: January 21, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-1628 Filed 1-24-86; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, March 4 and March 5, 1986, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 4:00 p.m. on March 4, 1986, and from 9:00 a.m. to approximately 4:00 p.m. March 5, 1986, for the review of research and development programs of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 4, from approximately 4:00 p.m. to 5:00 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Mr. Earl Henderson, Acting Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496-4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: January 2, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-1629 Filed 1-24-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Information Collections Submitted for OMB Review

The proposals for the collections of information listed below have 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 collections of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7340.

Title: Application for Permit for Drill, Deepen, or Plug Back, 43 CFR 3160.

Abstract: Data submitted by oil and gas lessees and operators is used for agency approval of proposed drilling operations through review of technical and environmental factors.

Bureau Form Number: 3160-3.

Frequency: On occasion.

Description of Respondents: Oil and gas lessees and operators.

Annual Responses: 6,000.

Annual Burden Hours: 5,000.

Title: Well Completion or Recompletion Report and Log, 43 CFR Part 3160.

Abstract: Data submitted by oil and gas lessees and operators is used for agency approval of specific additional operations on a well and to report the completion of such additional work.

Bureau Form Number: 3160-4.

Frequency: Nonrecurring.

Description of Respondents: Oil and gas lessees and operators.

Annual Responses: 1,100.

Annual Burden Hours: 1,145.

Bureau Clearance Officer: Rebecca Daugherty 202-853-8853.

Dated: October 2, 1985.

George F. Brown,

Assistant Director.

[FR Doc. 86-1654 Filed 1-24-86; 8:45 am]

BILLING CODE 4310-84-M

[A-21573 Through A-21578 and A-21584]

Conveyance or Lease of Public Land in Mohave County, AZ

BLM has determined the following described lands suitable to be classified for conveyance or lease under the provision of the *Recreation and Public Purposes Act* of June 14, 1926, as amended (43 U.S.C. 869 et seq.) and the regulations established by 43 CFR 2740 and 2910, and as amended in the Final Rulemaking, published in the *Federal Register* on December 10, 1985.

Gila and Sale River Meridian, Arizona

T. 13 N., R. 22 W.,

Sec. 9, portion E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ (4.16 acres for proposed police station);

Sec. 15, portion SW $\frac{1}{4}$ NW $\frac{1}{4}$ (1 acre for water well booster station) and portion E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ (43 acres in Mud Shark Community Beach);

Sec. 16, portion SE $\frac{1}{4}$ NE $\frac{1}{4}$ (1 acre for water well booster station) and portion SE $\frac{1}{4}$ (25 acres for waste water treatment plant);

Sec. 20, portion Lot 3 (2 acres for the Site Six facilities);

Sec. 21, portion SE $\frac{1}{4}$ NW $\frac{1}{4}$ (1 acre for proposed fire station).

The City of Lake Havasu has expressed an interest in the above described lands for community purposes; and the Arizona State Parks Board has applied for the following described lands, known as Windsor Beach, to remain a community park.

Gila and Salt River Meridian, Arizona

T. 13 N., R. 22 W.,

Sec. 4, E $\frac{1}{2}$ SW $\frac{1}{4}$ and that portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ west of State Highway 95;

Sec. 9, W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, portions of SE $\frac{1}{4}$, excepting the parcel for proposed police station and that portion south of the London Bridge channel.

The above described lands, totaling approximately 377 acres, are hereby segregated from appropriations under any other public land law, including location under the mining laws.

The lands transferred or leased by the United States will be subject to all valid existing leases, permits, agreements, and rights-of-ways. The actual legal descriptions and acreages will be delineated by U.S. Government survey prior to conveyance.

Detailed information concerning these conveyances can be obtained or seen at the Havasu Resource Area Office, 3189 Sweetwater, P.O. Box 685, Lake Havasu City, Arizona 86403. For a period of 45 days from the date of publication of this Notice in the *Federal Register*, interested parties may submit comments to the District Manager, Yuma District Office, 3150 Winsor Avenue, P.O. Box 5680, Yuma, Arizona 85364.

This classification will become final 60 days from the date of this publication, unless this classification is modified or cancelled by the authorized officer.

Dated: January 17, 1986.

B. Gene Miller,

Acting District Manager.

[FR Doc. 86-1638 Filed 1-24-86; 8:45 am]

BILLING CODE 4310-32-M

[A-21760 and A-21761]

Exchange of Public Land; Mohave County, AZ

The Bureau of Land Management has examined and determined the following

described public lands as suitable for disposal by Exchange pursuant to section 206(a) of the *Federal Land Policy and Management Act of 1976*, 43 U.S.C. 1716 and/or State Indemnity Selections pursuant to section 7 of *The Act of June 28, 1934* (43 U.S.C. 315f);

Gila and Salt River Meridian

T. 13 N., R. 20 W.,

Sec. 4, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ and that portion W $\frac{1}{2}$ SE $\frac{1}{4}$ east of State Highway 95;

Section 9, that portion S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ lying south of the London Bridge Channel;

Section 15, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, excepting Recreation and Public Purposes (R&PP) applications A-21574 and A-21578;

Section 16, NE $\frac{1}{4}$ E $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$, excepting R&PP applications A-21574 and A-21575;

Section 17, Lot 4 and SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Section 20, Lots 1, 2, 3, 4 and E $\frac{1}{2}$ NE $\frac{1}{4}$, excepting R&PP Serial No. A-21577;

Section 21, Lots 1, 2, 3, 4, E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ excepting R&PP Serial No. A-21576;

Section 22, Lot 4, NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$;

Section 23, Lot 1, and that portion NW $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, lying west of State Highway 95.

Comprising 2,000 acres of public land.

In accordance with the regulations of 43 CFR 2201(b), publication of this Notice will segregate the public lands from entry, including the mining laws. The segregative effect will terminate upon issuance of patent to the State of Arizona, upon expiration of 2 years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

The lands transferred by the United States will be subject to all valid existing leases, permits, agreements, and rights-of-ways. The actual legal descriptions and acreages will be delineated by U.S. Government survey prior to conveyance.

After final appraisal value is established, some of the public land will be used for exchange to acquire the following described land from the State of Arizona. The State will apply for the remaining lands under State Indemnity Selections.

Gila and Salt River Meridian

T. 17 N., R. 5 E.

A parcel of land located in Sec. 33 and 34 in Yavapai County, comprising 286.18 acres.

Detailed information concerning these conveyances can be obtained or seen at the Havasu Resource Area office, 3189 Sweetwater, P.O. Box 685, Lake Havasu City, Arizona 86403. For a period of 45 days from the date of publication of this Notice in the *Federal Register*, interested parties may submit comments to the

District Manager, Yuma District Office, 3150 Winsor Avenue, P.O. Box 5680, Yuma Arizona 85364.

Dated: January 17, 1986.

B. Gene Miller,

Acting District Manager.

[FR Doc. 86-1637 Filed 1-24-86; 8:45 am]

BILLING CODE 4310-32-M

[U-54569]

Realty Action; Sale of Public Lands in Washington County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) public land described as Lot 3, Section 11, T. 42 S., R. 13 W., SLB&M, Utah, containing 41.95 acres is proposed for sale by competitive bidding at no less than the appraised fair market value of \$12,230.00. The lands described are hereby segregated from all forms of appropriation under the public laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomical to manage by a government agency.

DATES: Comments should be submitted to the address listed below by March 17, 1986. The sale will be held on April 8, 1986 at 2:00 p.m.

ADDRESS: Detailed information concerning the sale, including bidding procedures, is available at the Dixie Resource Area Office, 225 North Bluff, St. George, Utah 84770 (801) 673-4654. The sale will be held at the same address.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for the surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States, a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1909, 26 Stat. 391, 43 U.S.C. 945.

3. Title transfer will be subject to valid existing rights including Oil and Gas Lease U-41430.

If the tract of public land is not sold pursuant to this notice, it will remain available for sale by sealed bid at no less than the appraised value. In this case, sealed bids will be accepted anytime and will be opened on the first business day of each month until the land is sold or removed from the market.

Any comments or objections received during the comment period will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action notice will be the final determination of the Department of the Interior.

Dated: January 14, 1986.

Morgan S. Jensen,

District Manager.

[FR Doc. 86-1659 Filed 1-24-86; 8:45 am]

BILLING CODE 4310-DO-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document, Conoco Inc.

AGENCY: Mineral Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4264, Block 312, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on January 13, 1986. Comments must be received within 15 days of the date of this Notice of 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that is available for review. Additionally this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program. Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: January 14, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-1620 Filed 1-24-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; FMP Operating Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that FMP Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4578, Block A-437, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on January 13, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie,

Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected states, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: January 14, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-1656 Filed 1-24-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770 [5 U.S.C. App. 1 10]), that a meeting of the Cape Cod National Seashore Advisory Commission will be held Friday, February 14, 1986.

The Commission as established pursuant to Pub. L. 91-383 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

The meeting will convene at Park Headquarters at 1:30 p.m. to discuss:

1. Request for extension of Commercial Certificates for Head of Meadow Service Station.
2. Fire Research.
3. Herring River—Ecological Considerations for Mosquito Control.
4. Subcommittee Report on Off-road Vehicle Use.

The meeting is open to the public. It is expected that 50 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Herbert Olsen, Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663 Telephone: (617) 349-3785. Minutes of the meeting will be available for public information and copying two weeks after the meeting at the office of the Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.
January 17, 1986.

FR Doc. 86-1732 Filed 1-24-86; 8:45 am]

BILLING CODE 4310-70-M

Gates of the Arctic National Park Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resources Commissions.

DATE: The meetings will be held starting on Wednesday, January 29, 1986 from 9:00 a.m. to 5:00 p.m., and ending Friday afternoon, January 31, 1986.

Location: Federal Building, 101 12th Avenue, Room 329, Fairbanks, Alaska.

Agenda: The following agenda items will be undertaken:

1. Call meeting to order.
2. Roll call.
3. Introduction and orientation of new commissioners.
4. Introduction of visitors and guests.
5. Minutes reviewed and approved.
6. National Park Service reports:
 - a. Revised General Management Plan
 - b. Research Projects
 - c. Kobuk River Patrols
 - d. Park Operations
 - e. Lands Projects
7. Program Outline.
8. Committee Workshops:
 - a. Eligibility
 - b. Access
 - c. General Management Plan
9. Committee reports and recommendations.
10. Public/Agency Testimony.
11. Other Business.
12. Date and agenda for next meeting.

13. Adjournment.

Written comments and recommendations received prior to January 20, 1986, will be considered at the meeting. All comments should be addressed to: Chairman, Gates of the Arctic National Park, Subsistence Resource Commission, c/o P.O. Box 74680, Fairbanks, Alaska 99707.

FOR FURTHER INFORMATION CONTACT: Richard G. Ring, Superintendent, Gates of the Arctic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707, Phone: (907) 456-0281.

SUPPLEMENTAL INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96-487, and operate under the provisions of the Federal Advisory Committees Act Pub. L.

Dated: January 8, 1986.

M.V. Finley,

Acting Regional Director, Alaska Region.

[FR Doc. 86-1733 Filed 1-24-86; 8:45 am]

BILLING CODE 4310-70-M

Kobuk Valley National Park and Cape Krusenstern National Monument Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Kobuk Valley National Park and Cape Krusenstern National Monument Subsistence Resources Commissions. The following agenda items will be discussed:

1. Minutes of the last meeting.
2. Discussion of changing quorum requirements.
3. Discussion of subsistence sheep hunts.
4. Discussion of resident zones.
5. Discuss schedule for Commission recommendations to the Secretary.
6. Discussions of Subsistence Commission Chairpersons meeting held in Anchorage.
7. Discuss progress of General Management Plans.

DATE: January 29, 1986 at 1:00 p.m. through 6:00 p.m., January 30, 1986.

ADDRESS: NANA Regional Corporation Conference Room Drift Inn Building, Kotzebue, Alaska.

FOR FURTHER INFORMATION CONTACT: Mack Shaver, Superintendent, Northwest Alaska Areas, National Park

Service, P.O. Box 287, Kotzebue, Alaska 99752.

SUPPLEMENTAL INFORMATION: The Kobuk Valley National Park and Cape Krusenstern National Monument Subsistence Resources Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487.

Dated: January 8, 1986.

M.V. Finley,

Acting Regional Director,

Alaska Region.

[FR Doc. 86-1734 Filed 1-24-86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Redelegation of Authority No. 40.4.1]

Redelegation of Authority Regarding Ocean Transportation Source

A. Pursuant to the authority delegated to me as Director, Office of Acquisition and Assistance Management under Delegation of Authority No. 40.4 dated March 16, 1981 (46 FR 18631), I hereby redelegate to the Chief, Transportation Division, authority to waive, in accordance with the criteria prescribed in Supplement B of A.I.D. Handbook 1, the ocean transportation flag eligibility requirements in order to permit the financing of transportation on vessels under flag registry of the cooperating country, any country included in AID Geographic Code 941 (Selected Free World), or AID Geographic Code 899 (Free World), or AID Geographic Code 935 (Special Free World) when the cost of the transportation services does not exceed \$25,000; provided, however, that all waivers approved pursuant to this authority which permit financing of transportation on vessels under flag registry of any country included in Code 899 or Code 935 shall contain a certification by the approving official that "The interests of the U.S. are best served by permitting financing of transportation services on ocean vessels under flag registry of free world countries other than the cooperating country and countries included in Code 941."

B. The Authority herein redelegated to the Chief, Transportation Division, may not be further redelegated but may be exercised by duly authorized persons who are performing the functions of the Chief in an acting capacity.

C. The Authority herein are to be exercised in accordance with regulations, procedures, and policies

now or hereafter established or modified and promulgated within the Agency for International Development.

D. I retain for myself concurrent authority to exercise the authority herein delegated.

E. This redelegation of authority shall be effective immediately.

Dated: December 19, 1985.

Robert Halligan,

Director, Office of Acquisition and Assistance Management.

[FR Doc. 86-1660 Filed 1-24-86; 8:45 am]

BILLING CODE 6116-01-M

Overseas Private Investment Corporation

Insurance Contract Form

AGENCY: Overseas Private Investment Corporation, Aid.

ACTION: Notice of Adoption of Form Contract.

SUMMARY: New standard form insurance contract adopted by Overseas Private Investment Corporation ("OPIC").

SUPPLEMENTARY INFORMATION: On May 21, 1985, the Overseas Private Investment Corporation ("OPIC") published a draft of a proposed new insurance contract form and solicited comments on the draft. After reviewing the comments received, OPIC has adopted the contract form set forth below, designated 234 KGT 12-85, for current use. Individual contracts, of course, may deviate from the standard form, and OPIC may change the standard form without notice in the Federal Register.

The new standard form contract is intended primarily to simplify the standard OPIC contract and make it more readable.¹ The new form provides materially the same coverage as the previous OPIC contracts (234 KGT 12-70 (Revised) and 234 KGT 12-70 (Second Revision)), but a number of changes to particular provisions have also been made. (OPIC may offer some of its current customers the opportunity to substitute the new contract for their present contracts and conversely may permit some investors to continue to use the previous contract forms.)

Following is a discussion of the major changes to the previous contract form and certain key provisions of the new contract. This discussion is intended to

¹ OPIC uses a number of other standard contract forms in addition to the basic one presented here, including special forms for coverage of loans, leases and oil and gas exploration projects. None of these are affected by the proposed changes to the basic form.

be an authoritative guide to understanding and interpreting the contract. It is not, however, a complete section-by-section analysis of the contract.

OPIC may, of course, modify any individual contract or amend the form contract without notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:
Richard Stern (202) 457-7025.

Summary of Contract Revisions

Contract Organization

To simplify the contract and make it easier to locate particular provisions, the contract has been reorganized along functional lines. A new Article I replaces the Special Terms and Conditions, which was previously a separate document. The main purpose of the new Article I is to identify the insured investment which is the subject of the contract. It also contains the basic exchange of promises between the parties, establishes the premium schedule, and provides an overview of the organization of the contract.

OPIC offers insurance coverage against three separate risks: (1) The risk that proceeds from the insured investment will not be convertible into U.S. dollars, (2) the risk of expropriation of the insured investment in the project, and (3) the risk of loss of project property due to war, revolution, insurrection or civil strife. (In the new contract, the last category of risks collectively is called "political violence".)

In the new contract, contract terms relating to each of the three OPIC coverages have been combined and reorganized into two articles, one defining the scope of coverage and one specifying the amount of compensation available. Thus, Article II defines the scope of coverage against invertibility of funds, and Article III specifies the amount of compensation payable if an event satisfies the scope of coverage requirements. Similarly, Article IV defines the scope of coverage and Article V specifies the amount of compensation available in the event of an expropriation of the insured investment. Articles VI and VII set forth the scope and amount of compensation for damage due to political violence.

If an investor chooses not to purchase all three types of insurance coverage offered by OPIC, the portions of the standard contract relating to those types of insurance that have not been purchased will be omitted from the investor's contract.

Articles VIII and IX contain general provisions applicable to all three

coverages. Article VIII sets out procedures, including those applicable to applications for compensation. Article IX outlines the investor's duties to OPIC. If an investor fails to comply with any of these duties, he may lose his right to compensation.

The previous OPIC contract began with definitions of 33 "governing terms." The new contract reduces the reliance on defined terms. Some definitions have been eliminated as unnecessary. In other instances, definitions have been incorporated into the substance of the relevant contract provisions. Others have become unnecessary as a result of the simplification of contract terms. For example, the definition of "Net Investment" is no longer necessary because the revised contract adopts a "book value" standard for compensation for expropriation.²

Article I—Subject of Insurance and Exchange of Promises

Section 1.01 describes the insured investment by setting forth the amount that will be contributed, the foreign enterprise which will receive the contribution, the securities which the investor will receive in return and the project to which the investment will be applied. Investors should be aware that subsequent investments to the same foreign enterprise which are not insured by OPIC can affect the computation of coverage. For example, assume that an investor owns all of a foreign enterprise and obtains insurance covering 90% of his 100 equity shares. If the investor subsequently contributes additional funds and receives 100 new shares, only the investment represented by 90 of his shares is covered, i.e., only 45% of the equity is insured under the invertibility and expropriation insurance. On the other hand, a subsequent contribution to capital without the issuance of new shares results in no change in the number of shares and percentage of equity covered under the expropriation and invertibility insurance; however, the amount of the contribution is deducted from book value in computing compensation for expropriation (section 5.03.2).

A subsequent, uninsured contribution to a branch foreign enterprise is treated the same as a contribution to an incorporated subsidiary for which no new shares are issued. Because compensation under the political violence insurance is based upon the

investor's entire equity interest (section 7.03), subsequent, uninsured contributions have no effect on the computation of the proportion of any loss which is compensated.

Section 1.03 states the maximum aggregate compensation for which OPIC could be liable under the contract. This amount will be equal to the highest of the maximum coverage amounts for the categories of risks elected for the first period of coverage. Because of this overall cap, payment of compensation under one coverage can have the effect of reducing the amounts of the other coverages remaining. For example, if the Investor has \$1,000,000 of maximum coverage each for invertibility, expropriation and political violence and the amount specified in section 1.03 is \$1,000,000, a payment of \$100,000 under any coverage will have the effect of reducing the maximum amounts of compensation for subsequent claims under the coverages to \$900,000 each, as the total amount payable under the contract cannot exceed \$1,000,000.

Article II—Invertibility—Scope of Coverage

Section 2.01 is intended to have the same essential effect as Articles 13 and 14 of the previous contract. As under the previous contract, OPIC does not insure against devaluation. Nor does OPIC insure that all the investor's funds in the project country will be convertible into United States dollars, but only "earnings from or returns of the insured investment." This language is intended to have the same meaning as the defined terms "Investment Earnings" and "Return of Capital" in the previous contract; that is, the only funds covered against the risk of invertibility are proceeds from the insured investment, such as dividends, repayments of principal and interest on loans, proceeds from the sale of securities acquired for the insured investment, and payments of technical assistance fees, management fees and royalties, if specifically covered. Also, if an investor owns all of the equity of a foreign enterprise, but only a portion of the stock is insured, only that portion of any invertible dividend or distribution could be made the subject of a claim.

Some previous OPIC contracts provided that invertibility coverage is lost as to local currency which has been held by the investor for more than 18 months (section 14.01, proviso (ii) (B) and (C)). During the past two years, however, OPIC's practice has been to delete the 18-month limitation by amendment to the contract form. The new contract codifies OPIC's practice.

² Recently, OPIC began issuing contracts to new investors which incorporate the "book value" approach by amending OPIC's standard contract form.

An investor may leave project earnings or other covered funds in the project country up to the termination of the contract without losing inconvertibility coverage.

The standard for determining whether local currency has in fact become inconvertible into dollars is a practical one. For example, if direct exchanges of local currency for dollars are prohibited by law or no dollars are available through the official exchange mechanism, but another legal and normal mechanism (such as a parallel market or government bonds which can be sold for dollars) remains available for converting funds, the local currency would not be considered inconvertible since a legal functional equivalent to a formal exchange market would be available. This is true even though the effective rate obtainable through such means may be less favorable than the rate nominally provided through other lawful channels. Similarly, if local currency is convertible into the currency of a third country, and that currency is in turn convertible into dollars, the requirements for compensation would not be satisfied. If the legal channel is a "thin market" and there is insufficient hard currency available to service all of the local currency in question, the portion of the local currency which cannot be converted into dollars will be considered inconvertible. The investor is not required to resort to any practice which is illegal under the laws of the project country, even if the practice is common.

As with the previous contract, the investor need not be in actual receipt of local currency to establish an inconvertibility claim. If the foreign enterprise attempts to make a conversion in order to pay dollars to the investor, the elements of a claim can be satisfied. OPIC will accept delivery of the local currency by the foreign enterprise as the delivery by the investor required by section 3.01.1 as a precondition to compensation.

OPIC's inconvertibility coverage applies only to situations in which the investor is unable legally to convert currency but can deliver the local currency to OPIC. Other types of government restrictions which preclude an investor from transferring funds out of the project country (such as restrictions on bank accounts) are not covered by OPIC's inconvertibility coverage, but may be compensable as an expropriation of funds (section 4.02) if they are illegal and satisfy the other requirements of Article IV.

OPIC coverage does not provide compensation for temporary delays in processing currency exchanges. Under

the previous contract, different waiting periods are provided, depending upon the reason for blockage, for establishing a mature claim. The new contract adopts a single time period. Ordinarily, the maximum waiting period is 60 days; however, since the time required to make currency exchanges under normal conditions varies from country to country, a longer time limit may be specified when a particular contract is executed.

Exclusions from inconvertibility coverage have been consolidated in section 2.02. Investors should pay particular attention to the exclusion of pre-existing restrictions (section 2.02(a)). If the investor would have been legally unable to convert local currency into dollars in similar circumstances on the date that the contract was issued, and if the investor either had actual notice of the exchange restrictions, or could have discovered them through the exercise of due diligence, OPIC does not pay compensation. Thus, OPIC's inconvertibility coverage does not guarantee an investor that a particular currency will in fact be convertible into dollars; rather, OPIC insures investors against the consequences of conversion restrictions not existing at the time the investor entered into the contract with OPIC. The investor assumes the burden of any exchange restrictions existing in the host country at the time the insurance is issued.

Also of particular importance is the exclusion in section 2.02(b), which requires the investor to make all reasonable efforts to convert the funds.

The exclusion for events due predominantly to provocation or instigation attributable to the investor (section 2.02(d)) applies to situations in which transfers of currency are blocked as a reasonable response by the government of the project country to actions attributable to the particular investor, including corrupt practices, such as bribery of foreign government officials. Investor actions which are legal under local and international law may nonetheless constitute provocation or instigation if they are unreasonable. Actions by a foreign enterprise controlled by the investor are considered attributable to the investor. Actions taken in compliance with a specific request of the United States Government and measures taken in good faith by the investor or foreign enterprise in litigation against the government of the project country would not be considered unreasonable. OPIC is pleased to consult with any investor concerning the applicability of this provision to any contemplated action.

Article III—Inconvertibility—Amount of Compensation

Section 3.01 of the draft is a simplification of the defined term "Reference Rate of Exchange" in the existing contract, as modified by standard amendments. The basic standard for calculating compensation for inconvertibility is the official rate of exchange recognized by the government of the project country 60 days prior to receipt of the application for compensation by OPIC. If more than one official exchange rate was in effect, OPIC pays compensation at the exchange rate which would have been applicable to the type of transfer involved (e.g., dividend remittance, debt repayment).

Some countries maintain a nominal official rate of exchange for political purposes, but permit conversions to be made at a different (usually less favorable) rate of exchange in a parallel market or through some other channel such as a government bond market. If dollars were not generally and readily available to the public at the official exchange rate, compensation is computed at the effective rate at which dollars were available in the project country through a legal and normal channel (section 3.01.2). The exchange rate prevailing in that channel shall be the applicable rate even if insufficient dollars are available through it to service the entire demand.

Article IV—Expropriation—Scope of Coverage

Provisions relating to acts constituting expropriation have been combined and rewritten in Article IV. The article is divided into two sections, "total expropriation" and "expropriation of funds." OPIC does not insure against partial expropriation as such. An expropriation of a portion of the insured investment, or an action which partially impairs the investor's rights in the investment, is covered only if it meets the requirements for "total expropriation" (section 4.01). Prior to receiving compensation from OPIC, an investor must assign to OPIC all of its interest in the project attributable to the insured investment (section 8.02).

Expropriations of proceeds from the insured investment, however, are covered by the "expropriation of funds" provision (section 4.02). This is the only form of partial expropriation compensable by the contract without requiring an assignment of the total insured interest. Compensation is in the amount of the value of the expropriation proceeds and the rights assigned to

OPIC are only those related to the proceeds. The investor need not have received the funds in question in order to establish a claim. For example, governmental action preventing receipt by the investor could be the basis for a claim if the other requirements are met.

The new contract, like the previous one, requires governmental action to establish expropriation (section 4.01(a)). Neither recognition by the Government of the United States nor a legal manner of succession is necessary for an entity to be considered a "foreign governing authority." The test is whether the entity is in *de facto* control of the part of the country in which the project is located and performs the functions of a government. The action complained of must be legally attributable to the government or a subdivision of it (such as a province or agency). For example, if an organized rebel force takes and maintains control of part of the country and expropriates the project, OPIC would pay compensation, even though the investor's legal rights were still recognized by the central government. Also, an action by a government-owned corporation can be the basis for an expropriation if the government is legally responsible for the action. The term "foreign" is used to exclude the Government of the United States and any military command in which it participates.

The substance of proviso 1 to the definition of Expropriatory Action in the previous contract has been retained in the illegality requirement of section 4.01(b). Thus, governmental actions may have a substantial adverse effect on the project, but if they are not illegal under local or international law they do not constitute a compensable expropriation. For example, bona fide tax increases, price controls, currency controls, regulatory measures or other legitimate governmental actions may seriously harm an investor, but if they are not illegal as applied to the investor, OPIC would not pay compensation.

Section 4.01(c), the taking requirement, provides that illegal government action is compensable as a total expropriation under the OPIC contract only if it has the effect of directly depriving the investor of fundamental rights in the insured investment. Rights are "fundamental" if their denial substantially deprives the investor of the benefits of the investment. Not all of the investor's rights with respect to the insured investment need be affected.

As under the previous contract, the focus is on the practical effect of the illegal actions on the investor's interest. A right that is fundamental in one case

may not be in another. In each instance, the significance of the rights in question must be examined in the context of the overall investment arrangement. The action could affect the foreign enterprise directly or the investor's rights with respect to the foreign enterprise.

For example, a breach by the host government of an investment agreement, either with the investor or with the foreign enterprise, might violate international and local law. The breach would not give rise to a valid claim for total expropriation, however, unless it so impeded the project's ability to continue to operate or the investor's rights with respect to the foreign enterprise that it substantially deprived the investor of the benefits of the investment.

As under the previous contract, the illegal government actions must "directly" deprive the investor of the benefits of the investment. The contract does not insure investors against actions which directly deny only rights of third parties. OPIC does recognize, however, that actions which transgress the rights of a corporation also deny rights to the investors in the corporation.

As under the previous contract, the expropriatory effect must continue for one year. An investor is not required to exhaust local remedies for breaches of local or international law before submitting its claim to OPIC, but it is required to pursue them for one year (section 4.01(d)), and to consult and cooperate with OPIC (section 9.01(8) and (9)) in doing so.

The provocation and instigation section (section 4.03) has the same meaning as the provocation and instigation section for inconvertibility coverage, described above. For example, assume that a mining lease was obtained originally by bribery or other corrupt practices by the investor and that upon discovery of the circumstances the government of the country in which the project is located declares the lease void. Compensation would not be due from OPIC, since a preponderant cause of the expropriation would be the investor's corrupt practices.

Article V—Amount of Compensation—Expropriation

Under some previous OPIC contracts, compensation for total expropriation was determined under the definition of "Net Investment." This formula is replaced in the draft by the "book value" concept, which is more familiar to accountants and business people. Essentially, book value means the initial investment in a project, adjusted by the net retained earnings or losses of the

project. The term "book value" is applied to calculate the compensation for losses due to expropriation of the insured investment and net retained earnings up to the contract maximum. On the other hand, the investor does not receive compensation for losses from causes other than expropriation, nor does the investor benefit from accounting practices which the investor does not ordinarily use or which do not reflect economic reality.

OPIC does not generally provide expropriation coverage for the full amount of an investor's investment in a project, but only for that portion of the investor's investment identified in Article I as the "insured investment" (§ 1.01). In the event of an expropriation, OPIC does not pay compensation based on the full book value of the investor's investment in the project, but only for the *pro rata* share of book value attributable to the portion of the investment in the project that is insured by OPIC (section 5.01). For example, suppose that an investor is a one-half partner in a project, and the investor's contract stipulates that 90% of the investor's investment constitutes the "insured investment" (section 1.01). Compensation for expropriation would be based on 45% of the project's book value (the investor's one-half share multiplied by the 90% which OPIC insures). If the investor contributes additional sums to the project (either directly or through a third party) but does not obtain additional OPIC insurance, the additional contributions are deducted from book value in computing compensation (section 5.03(2)) even though no new shares are issued.

Book value is based on financial statements maintained by the investor in accordance with accounting principles generally accepted in the United States ("GAAP") and translated into dollars in accordance with GAAP. The methods of accounting used in submitting a claim to OPIC must be consistent with the investor's own accounting methods for similar circumstances and periods. OPIC will follow the investor's choice of alternative methods within GAAP and reasonable valuations of contributed property, but adjustments can be made to (1) adjust related party transactions to reflect fair market prices; (2) disregard the effects of tax sharing agreements and consolidated accounting; and (3) write-down the book value of impaired assets of fair market value. Also, any accounting treatment which substantially overstates the fair market value of the insured investment

or the foreign enterprise viewed as an independent entity will not be accepted.

The new contract adds a provision to benefit investors experiencing normal losses during the development phase of a new enterprise, up to three years. Even though start-up expenses incurred in development reduce book value below the amount of the original contributed investment, the investor can be compensated in the amount of the original insured contribution if the foreign enterprise is a going concern when the expropriatory effect commences and it is clear that no adjustment is warranted for a write-down of assets.

OPIC's previous standard contract (section 2.11) required the investor to maintain annual certificates from a responsible financial officer or outside accountants acceptable to OPIC certifying that financial records were maintained in accordance with generally accepted accounting principles. The new contract eliminates that requirement. However, the investor remains responsible for maintaining records sufficient to substantiate all aspects of claims for compensation (section 9.01.6).

Provisions relating to other compensation and retained property (section 5.03.4) have been rewritten to delete the requirements for certain assignments and possible removal of assets from the project country. As a result of these changes, if property remains subject to the investor's effective control after the expropriation, OPIC may decline to accept the assignment of rights to that property and may deduct from the compensation payable the property's book value. The purpose of this provision is to ensure that the investor is compensated only for actual losses due to expropriation. For example, assume that an investor made an insured investment in a project consisting of a rubber plantation and a rubber vulcanizing plant and that the plantation, but not the plant, was expropriated. If the plantation constituted a substantial portion of the project's assets, OPIC would pay compensation for total expropriation in the amount of the insured investment's *pro rata* share of the book value of the total project and receive an assignment of the investor's interest in the entire project (section 8.02). However, under sections 5.03.4(b) and 8.02 of the new contract, OPIC could refuse to accept an assignment of the investor's interest in the plant, if it remained subject to the investor's effective disposition and control and commercially viable. The

book value attributable to the plant would be deducted from compensation.

Also, section 5.03.4(c) provides that OPIC may reduce compensation to offset obligations of which the investor is relieved by the expropriation.

Limitations on amounts of compensation are substantially the same as under the previous contract.

Article VI—Political Violence—Scope of Coverage

OPIC's previous contract provided coverage against "Damage," which is defined to include injury to property from "war, revolution or insurrection" (section 1.07). In addition, in recent years OPIC has offered a standard addendum which broadens coverage to include damage caused by "civil strife." Several of these terms are becoming words of art with established meanings under international and domestic law. OPIC does not intend to limit coverage to violent events that fall into one of these established categories. Therefore, § 6.01 has been written to define "political violence" broadly as any violent act which has a political objective as its principal, immediate motive. Declared and undeclared wars, hostile actions by armed forces, civil wars, revolutions, insurrections, civil strife, terrorism and sabotage all qualify as examples of types of political violence which are covered. This list is not intended to be exhaustive, and other actions that satisfy the definition of political violence are also covered.

A political objective must be the primary intent of the specific act. Thus, an ordinary criminal act, such as a robbery, to obtain financing for a political group would not be encompassed in the term "political violence."

Labor and student violence may not be included within political violence coverage, however. In determining whether a specific action falls into the category of political violence, which is covered under the contract, as opposed to the category of labor or student violence, which is not covered, the primary objective of the act as it affects the investor must be considered. For example, if in the course of a general strike to achieve higher wages, the investor's property is destroyed, compensation would not be payable since the primary goal of the violence was related to a typical labor objective. On the other hand, if the general strike was called to bring down a government, attendant violence would be "political violence" unless the specific act of violence directly affecting the investor was motivated by a separate labor objective.

A number of types of property are not eligible for political violence coverage. Only the loss, damage or destruction of "tangible property of the foreign enterprise used for the project" is covered. Thus, notes or other intangibles are not protected against theft or destruction due to political violence. In addition, certain valuable items such as precious metals, gems, works of art, money and documents are excluded from coverage (section 6.02(a)). However, property leased by the foreign enterprise is considered property "of" the foreign enterprise, and therefore it is covered, provided that it is actually used for purposes of the project and the foreign enterprise bears the risk of loss.

Compensation will not be paid for losses that could have been prevented by taking reasonable protective measures (§ 6.02(c)). In applying this provision, measures which could have been taken by the management of the enterprise as well as by the investor must be considered.

The provocation and instigation provision (section 6.02(d)) has essentially the same meaning as under the inconvertibility and expropriation coverages, described above. In assessing whether particular actions constitute provocations, the existing political climate in the project country must be taken into account. Actions that are legal and that would be reasonable under ordinary circumstances may nevertheless constitute provocation if the investor, or local representatives acting on the investor's behalf, knew or should have known that the action might foreseeably result in political violence.

Article VII—Amount of Compensation—Political Violence

Contract provisions relating to compensation for damage due to political violence have been restructured to provide alternative measures of compensation: historical cost and replacement cost (section 7.01). If the investor does not repair or replace the property permanently lost due to political violence within three years, the investor can obtain compensation on a historical cost basis only.

Historical cost is the investor's share of the least of the actual original cost of the item, the fair market value of the item at the time it was lost or the reasonable cost to repair the item. The determinator of reasonable cost to repair property is based on the actual conditions which exist in the country at the time. "Investor's share" is defined as the proportion of equity in the foreign enterprise held by the investor (section 7.03). The total amount of compensation

received on a historical cost basis for a single incident or a related series of incidents may not exceed the total book value of the investor's insured investment in the project at the time of the loss (section 7.02(c)).

If the investor does repair or replace the property within three years with new or used property which is equivalent to or better than that which was lost, the investor may elect to have OPIC pay compensation based on the actual cost to repair or replace the property, less any other compensation received, up to a maximum of 200% of the original cost of the item which was lost (section 7.01(b)). Compensation for any item cannot exceed 200% of the investor's share of the amount so calculated (section 7.02(d)). This limitation affects only an investor with less than a 50% equity interest in the foreign enterprise.

For example, assume that an investor has a 40% interest in a foreign enterprise which suffers loss through political violence of a machine having an original cost of \$10,000. The replacement cost of the machine is determined to be \$25,000 and other insurance compensates \$3,000, leaving a potential out-of-pocket replacement cost requirement of \$22,000. Under the basic replacement cost compensation provision (section 7.01(b)), compensation would be limited to \$20,000—200% of original cost. As the investor has only a 40% equity interest, compensation is limited by section 7.02(d) to \$16,000—200% of the investor's share (40%) times \$20,000 (the amount calculated under section 7.01(b)).

Compensation on a replacement cost basis may exceed the book value of the investor's insured investment in the project on the date of the loss.

Sections 9.01.3 and 7.02(b) require the investor to remain uninsured for the risk of loss to physical assets by political violence in an amount equal to at least ten percent of the book value of the investor's interest in the foreign enterprise, whether historical or replacement cost compensation is sought.

As under the previous contract, political violence coverage applies to partial damage to property, as well as total destruction. However, OPIC does not pay compensation if the project is deprived temporarily of the use of its property, nor does it pay for lost profits or consequential damages. For example, if an invading army commandeers delivery trucks belonging to the project for six months and then returns them, OPIC would pay compensation based on any physical damages to the delivery trucks, but it would not pay for the loss of use of the trucks or for lost profits

which the project sustained because it was unable to operate during the period that it was deprived of the use of the trucks.

A new feature in the proposed draft is a provision for a mutually agreed upon appraiser to resolve any dispute concerning valuation (section 7.05).

Of course, any compensation received from other sources (including under other OPIC contracts) is deducted in the computation of loss.

Article VIII—Procedures

Article VIII consolidates and reorganizes the procedures applicable to claims. With only a few exceptions, Article VIII either has the same effect as the previous contract or puts into the contract the policies which OPIC has followed as a matter of practice.

Section 8.01 deals with applications for compensation, including time limits. There is no prescribed form for an application for compensation, but a list of required documents for inconvertibility claims is furnished upon request of an investor who is about to file a claim.

Section 8.02 sets forth the rights which must be transferred to OPIC in connection with claim payments.

Section 8.04 provides for payment of excess salvage to the investor. If OPIC obtains greater value from property transferred to it than the amount of compensation paid, plus interest and OPIC's expenses, OPIC will refund the excess to the investor. However, this provision in no way obligates OPIC to take any actions with regard to the property transferred to it.

The rules concerning election of coverage are set forth in section 8.06, including rules for mandatory minimum elections.

Section 8.09 codifies OPIC's existing policy relating to the refund of premiums.

Article IX—Investor's Duties

The Investor's Duties section of the contract is intended to collect in one place all of the investor's duties to OPIC. If the investor materially breaches any of the duties to OPIC, the investor may lose the right to compensation.

Of course, material misrepresentations in the application for insurance or material changes—such as a change in the line of business in which the foreign enterprise is engaged—can invalidate coverage (section 9.01.1). It is important that investors realize that OPIC considers statutory policy goals, as well as underwriting considerations, in deciding whether to issue insurance

to a particular investor. Accordingly, misrepresentations or changes can be grounds for voiding coverage even if they do not affect underwriting risk.

Section 9.01.3 requires the investor to maintain the risk of loss for at least ten percent of the book value of its interest in the foreign enterprise. For this ten percent, the investor may not obtain insurance from any source. Other provisions in the draft contract reduce the compensation otherwise payable to ensure that this duty is satisfied (section 5.04(c), section 7.02(b)).

The investor must maintain adequate accounting books and records and regularly prepared financial statements which can be a basis for computing compensation. All accounting must be in accordance with principles of accounting generally accepted in the United States, including principles of currency translation (section 9.01.6).

The contract gives OPIC authority to require investors to make available any and all information which may be relevant to OPIC's duties, which include not only processing claims but also reporting to the Congress (section 9.01.7).

The investor is required to consult with OPIC concerning any events which could result in claims for compensation under the expropriation or political violence coverage (section 9.01.8 and section 9.01.9). Prior to the time that the investor assigns rights in the insured investment to OPIC, the investor is obliged, at its own expense, to take all reasonable measures to preserve property or rights which may be transferred to OPIC, including pursuing administrative and judicial remedies. After the transfer of property or rights to OPIC, the investor has a duty to cooperate with OPIC in any actions which OPIC may take with regard to the rights or property. For example, the investor shall, in exchange for the payment of reasonable out-of-pocket expenses by OPIC, make available appropriate personnel and information to assist OPIC in preserving the property or in prosecuting claims.

Of course, OPIC cannot investigate an investor's representations or compliance with all duties until after a claim arises. Therefore, it is important that investors understand that OPIC does not, through inaction, waive any breaches of investor's duties (section 9.03).

Elizabeth Burton,
Corporate Secretary.

Form 234 KGT 12-85

OPIC Contract of Insurance No.

Overseas Private Investment Corporation Contract of Insurance Against as Defined Below, Between the Overseas Private Investment Corporation ("OPIC") and (the "Investor")

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¹ This Table of Contents applies to all coverages offered by OPIC whether or not all of those coverages are provided in this contract.

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Article I—Subject of Insurance and Exchange of Promises

- 1.01 *Subject.*
 1. *Investment.* The Investor promises that the Investor contributed or will contribute to (the "foreign enterprise") for which the Investor has acquired or will acquire (together "the investment").
 — % of each of these interests acquired by the Investor is insured under this contract (the "insured investment").
 2. *Project.* The investment will be applied to (the "project").
 1.02 *Promises.*
 OPIC promises that if acts occur during the term of this contract which satisfy the requirements for coverage in

Article —, OPIC will pay the Investor the amount of compensation provided in Article —, in accordance with the procedures in Article VIII.

The Investor promises to comply with the duties in Article IX. If the Investor violates any of those duties, the Investor may lose rights, including the right to compensation.

Amendments to Articles I through IX may be contained in Article X.

1.03 *Maximum Aggregate Compensation.*

OPIC will not pay compensation under this contract in an aggregate amount that exceeds \$—.

1.04 *Full Faith and Credit.*

The full faith and credit of the United States of America is pledged to secure that full payment by OPIC of its obligations under this contract.

1.05 *Term.*

This contract shall enter into force on the date it has been signed by OPIC and the Investor and shall terminate — years afterward.

1.06 *Premiums and Coverage Elections.*

The Investor shall elect amounts of coverage (§ 8.06) and pay premium on or before each annual anniversary of the effective date of the contract. By notice to the Investor at least thirty days prior to a premium due date, OPIC may increase the rates for Current Insured Amounts. The total increase during the first ten years shall be limited to 50% of the rates for the first period of this contract and thereafter to 100% of the rates for the first period.

The coverages and premiums for the first period shall be as follows:

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_____ securities:

	<u>Inconvertibility</u>	<u>Expropriation</u>	<u>Political Violence</u>	
Maximum Insured Amount:	\$	\$	\$	
Current Insured Amount:	\$	\$	\$	
Premium rate is:	x %	x %	x %	
<hr style="border-top: 1px dashed black;"/>				
Total premium due for Current is:	\$	+ \$	+ \$	= \$
Standby Amount (Maximum less Current):	\$	\$	\$	
Premium rate is:	x %	x %	x %	
<hr style="border-top: 1px dashed black;"/>				
Total premium due for Standby is:	\$	+ \$	+ \$	= \$
<hr style="border-top: 1px dashed black;"/>				
Total premium due for coverage of _____ securities is:				\$
<hr style="border-top: 1px dashed black;"/>				

_____ securities:

	<u>Inconvertibility</u>	<u>Expropriation</u>	<u>Political Violence</u>	
Maximum Insured Amount:	\$	\$	\$	
Current Insured Amount:	\$	\$	\$	
Premium rate is:	x %	x %	x %	
<hr style="border-top: 1px dashed black;"/>				
Total premium due for Current is:	\$	+ \$	+ \$	= \$
Standby Amount (Maximum less Current):	\$	\$	\$	
Premium rate is:	x %	x %	x %	
<hr style="border-top: 1px dashed black;"/>				
Total Premium due for Standby is:	\$	+ \$	+ \$	= \$
<hr style="border-top: 1px dashed black;"/>				
Total premium due for coverage of _____ securities is:				\$
<hr style="border-top: 1px dashed black;"/>				
Total Premium				\$
<hr style="border-top: 1px dashed black;"/>				

Article II—Inconvertibility—Scope of Coverage

2.01 Inconvertibility of Local Currency. Local currency shall be deemed inconvertible and compensation shall be payable, subject to the exclusions (section 2.02) and limitation (section 3.02), if the Investor is unable legally to convert earnings from or returns of the insured investment into United States dollars through any channel during the _____ days immediately prior to a claim to OPIC, except at rates which are on each day less favorable than the rate described under section 3.01.2 for that day.

2.02 Exclusions. Regardless of any other provisions, no compensation for inconvertibility shall be payable if:

(a) **Pre-existing Restrictions.**

(1) The Investor would have been unable legally to convert local currency into United States dollars in comparable circumstances on the date of this contract; and

(2) The Investor knew or should have known about the restriction; or

(b) **Investor Diligence.** The Investor has not made all reasonable efforts to convert the local currency into United States dollars through all direct and indirect legal mechanisms reasonably available; or

(c) **Reconversions.** The local currency represents funds which were previously converted into another currency; or

(d) **Provocation.** A preponderant cause of the inconvertibility is unreasonable actions attributable to the investor, including corrupt practices, which provoke or instigate a loss.

Article III—Inconvertibility—Amount of Compensation

3.01 Rate of Compensation for Inconvertibility.

1. Date. If the requirements of inconvertibility are satisfied (Article II), OPIC shall pay compensation against prior delivery of the inconvertible local currency. The compensation shall be the United States dollar equivalent of the local currency at the exchange rate in effect sixty days before OPIC receives the completed application for compensation.

2. Exchange Rate.

(a) The exchange rate shall be the official exchange rate applicable to the type of remittance involved.

(b) If, however,

(1) United States dollars were not generally available at the applicable official exchange rate; and

(2) Exchanges of local currency for United States dollars were effected legally and normally through another channel; then the exchange rate shall be

the effective rate obtained through that channel.

(c) In either case, the exchange rate shall be net of all deductions for governmentally imposed charges, such as taxes and commissions.

3.02 Limitation. Compensation shall not exceed the Current Insured Amount (section 8.06) in effect sixty days before OPIC receives the application for compensation.

Article IV—Expropriation—Scope of Coverage

4.10 Total Expropriation.

Compensation is payable for total expropriation (section 5.01), subject to the exclusion (section 4.03) and limitations (section 5.04), if an act or series of acts satisfies all of the following requirements:

(a) The acts are attributable to a foreign governing authority which is in *de facto* control of the part of the country in which the project is located;

(b) The acts are violations of international law (without regard to the availability of local remedies) or material breaches of local law;

(c) The acts directly deprive the Investor of fundamental rights in the insured investment (Rights are "fundamental" if without them the Investor is substantially deprived of the benefits of the investment); and

(d) The violations of law are not remedied (§ 9.01.9) and the expropriatory effect continues for one year.

4.02 Expropriation of Funds.

Compensation is payable for an expropriation of funds that constitute a return of the insured investment or earnings on the insured investment (section 5.02) if an act or series of acts:

(a) Satisfies the governmental action, illegality and duration requirements (section 4.01 (a), (b) and (d)); and

(b) Directly results in preventing the Investor from:

(1) Repatriating the funds; and

(2) Effectively controlling the funds in the country in which the project is located.

4.03 Provocation Exclusion. No compensation shall be paid for any loss for which a preponderant cause is unreasonable actions attributable to the Investor, including corrupt practices, which provoke or instigate a loss.

Article V—Expropriation—Amount of Compensation

5.01 Total Expropriation. For total expropriation (section 4.01), OPIC shall pay compensation in United States dollars in the amount of the book value of the insured investment, subject to

adjustments (section 5.03) and limitations (section 5.04).

Compensation is computed as of the date the expropriatory effect commences (section 4.01(c)) and is based on financial statements maintained by the Investor in accordance with section 9.01.6 for the foreign enterprise. However, OPIC may audit and make adjustments to the financial statements:

(1) To conform them to principles of accounting generally accepted in the United States; and

(2) To make the adjustments (section 5.03).

OPIC shall be bound by the Investor's choice among generally accepted accounting principles, if the choice is consistent with the Investor's own accounting, unless such choice results in a substantial overstatement of the fair market value of the insured investment or the foreign enterprise as an independent entity.

5.02 Expropriation of Funds. For expropriation of funds (section 4.02), OPIC shall pay compensation in the amount of the United States dollar equivalent of the expropriated funds at the exchange rate determined by section 3.01.2, computed as of the date the expropriation begins. Compensation for expropriation of funds shall be subject to the adjustments and limitations (section 5.03 and section 5.04).

5.03 Adjustments.

1. Investments of Property. Non-cash items contributed as part of the investment shall be adjusted to reasonable value of the items furnished at the time of transfer, plus freight and other reasonable direct costs incurred in furnishing the items to the project.

2. Non-Insured Contribution. Any direct or indirect contribution by the Investor after the insured investment is made shall be deducted from book value.

3. Special Accounting Rules. Dealings among related parties shall be adjusted to the standard of arm's length dealing, and forgiveness of obligations shall be disregarded. Each entity shall be accounted for as if it were a separate person for income tax purposes, and the effect of tax shifting arrangements shall be disregarded. Obsolescence or permanent reduction in recoverable values shall be recognized by adjusting the book value of productive facilities and assets to realizable value. OPIC may adjust financial statements to reflect the effect of events that occur before the expropriatory effect commences, such as events of loss which are later confirmed.

4. *Other Compensation and Retained Property.* OPIC may reduce compensation for:

(a) Compensation received from other sources on account of the expropriation;

(b) The book value of commercially viable property which remains subject to the Investor's effective disposition and control after the expropriatory effect commences (unless OPIC requires the Investor to assign the property (section 8.02); and

(c) Any obligation the Investor is relieved of by the expropriation.

The reduction shall be proportionate to the extent that these items are attributable to the insured investment.

5. *Start-up Expenses.* If the book value of the insured investment of a new foreign enterprise in the development stage is less than the insured amount originally contributed, the accumulated loss will be disregarded if:

(a) the foreign enterprise is newly formed for the principal purpose of undertaking the project,

(b) The foreign enterprise is a going concern as of the date of expropriatory effect commences,

(c) That date is within three years of the date this contract is issued, and

(d) It is clear that no adjustment to book value is necessary by reason of obsolescence or permanent reduction in recoverable values of productive facilities or assets.

5.04 *Limitations.* Compensation shall not exceed any of the following limitations:

(a) *Current Insured Amount.* The Current Insured Amount (section 8.06) on the date the expropriatory effect commences;

(b) *Insolvency.* If foreign enterprise liabilities exceed assets as of the date the expropriatory effect commences, the amount that the Investor would have been entitled to receive in insolvency proceedings with respect to the insured investment if assets had been liquidated at book value on that date;

(c) *Self-Insurance.* The maximum amount which could be received by the Investor from OPIC without breaching section 9.01.3.

Article VI—Political Violence—Scope of Coverage

6.01 *Loss Due to Political Violence.* Compensation is payable, subject to the exclusions (section 6.02) and limitations (7.02), if political violence is the direct and immediate cause of the permanent loss (including loss of value by damage or destruction) of tangible property of the foreign enterprise used for the project.

"Political violence" means a violent act undertaken with the primary intent of

achieving a political objective, such as declared or undeclared war, hostile action by national or international armed forces, civil war, revolution, insurrection, civil strife, terrorism or sabotage. However, acts undertaken primarily to achieve labor or student objectives are not covered.

6.02 *Exclusions.* Regardless of any other provision of this contract, no compensation shall be payable:

(a) *Excluded Property.* For loss of precious metals, gems, works of art, money or documents;

(b) *Minimum Loss.* If the amount of compensation payable would be less than \$5,000;

(c) *Reasonable Protective Measures.* If the loss results from the failure to take reasonable measures to protect or preserve the property; or

(d) *Provocation.* If a preponderant cause of the loss is attributable to the unreasonable actions of Investor, including corrupt practices, which provoke or instigate a loss.

Article VII—Political Violence—Amount of Compensation

7.01 *Basis of Compensation.* If the requirements of Article VI are satisfied, and subject to the limitations (section 7.02), OPIC shall pay compensation in United States dollars for any item of property loss. Compensation shall be in the amount of historical cost, or, if the requirements of section 7.01(b) are met, in the amount of replacement cost.

(a) *Historical Cost.* Historical cost is the Investor's share (section 7.03) of the least of:

- (1) The original cost;
- (2) Fair market value; or
- (3) The reasonable cost to repair the property;

less anything of value received by the Investor on account of the property lost, including insurance proceeds, and less the Investor's share of any such receipts by the foreign enterprise.

(b) *Replacement Cost.* If the Investor so elects, OPIC will pay the reasonable cost to repair any item of lost property or to replace it with equivalent new property, less anything of value received by the Investor or the foreign enterprise on account of the property lost, including insurance proceeds. Such compensation shall not exceed 200% of the original cost of the item. To receive such compensation, the Investor must repair or replace the lost property within three years of the loss.

7.02 *Limitations.* Regardless of any other provision of this contract, the following limitations shall apply in computing compensation:

(a) *Current Insured Amount.* Compensation shall not exceed the

Current Insured Amount (section 8.06) on the date of the loss.

(b) *Self-insurance.* Violation of the duty to be self insured (section 9.01.3) shall result in a corresponding reduction of compensation otherwise payable under this contract.

(c) *Aggregate Historical Cost Compensation.* Aggregate compensation for property compensated at historical cost shall not exceed the book value of the insured investment (section 7.04) at the time of loss.

(d) *Replacement Cost Limit.* Compensation for any item compensated at replacement cost shall not exceed 200% of the Investor's share of the amount calculated under (section 7.01(b)).

7.03 *Investor's Share.* "Investor's share" means the ratio of the number of equity shares owned by the Investor to the total number of equity shares of the foreign enterprise.

7.04 *Book Value of Insured Investment.*

(a) *Book Value.* Book value is based on financial statements maintained by the Investor in accordance with section 9.01.6 for the foreign enterprise. However, OPIC may audit and make adjustments to the financial statements.

(1) To conform to principles of accounting generally accepted in the United States; and

(2) To make the adjustments described in section 7.04(b).

OPIC shall be bound by the Investor's choice among generally accepted accounting principles, if the choice is consistent with the Investor's own accounting, unless such choice results in a substantial overstatement of the fair market value of the insured investment or the foreign enterprise as an independent entity.

(b) *Adjustments.*

(1) *Investments of Property.* Non-cash items contributed to the investment shall be adjusted to reasonable value of the items furnished at the time of transfer, plus freight and other reasonable direct costs incurred in furnishing the items to the project.

(2) *Non-Insured Contribution.* Any direct or indirect contribution by the Investor after the insured investment is made shall be deducted from book value.

(3) *Special Accounting Rules.*

Dealings among related parties shall be adjusted to the standard of arm's length dealing, and forgiveness of obligations shall be disregarded. Each entity shall be accounted for as if it were a separate person for income tax purposes, and the effect of tax shifting arrangements shall be disregarded. Obsolescence or

permanent reduction in recoverable values shall be recognized by adjusting the book value of productive facilities and to realizable value. OPIC may adjust financial statements to reflect the effect of events that occur before the property is lost, such as events of loss which are later confirmed.

(4) *Start-up Expenses.* If the book value of the insured investment of a new foreign enterprise in the development stage is less than the insured amount originally contributed, the accumulated loss will be disregarded if:

(a) The foreign enterprise is newly formed for the principal purpose of undertaking the project,

(b) The foreign enterprise is a going concern as of the date of the loss,

(c) That date is within three years of the date this contract is issued, and

(d) It is clear that no adjustment to book value is necessary by reason of obsolescence or permanent reduction in recoverable values of productive facilities or assets.

(c) *Insolvency.* If foreign enterprise liabilities exceed assets as of the date of the loss, book value of the insured investment shall not exceed the amount that the Investor would have been entitled to receive in insolvency proceedings with respect to the insured investment if assets had been liquidated at book value on the day prior to the loss.

7.05 *Appraisal.* If OPIC determines that compensation is payable but OPIC and the Investor are unable to agree on a question of valuation, either may demand the appointment of an impartial appraiser. If the parties are unable to agree on the appraiser, the appointment shall be made by the American Arbitration Association. The appraiser's itemized appraisal shall be binding. Appraisal costs shall be borne equally by OPIC and the Investor.

7.06 *Estimated Compensation.* If OPIC determines that compensation is payable but conditions in the project country preclude reasonable efforts by OPIC to determine the precise amount due, OPIC may pay estimated compensation based on the information then available. OPIC may revise its estimate and recover any excess or pay any additional amount due.

Article VIII—Procedures.

8.01 *Application for Compensation.* An application for compensation shall demonstrate the Investor's right to compensation in the amount claimed. The Investor shall provide such additional information as OPIC may reasonably require to evaluate the application. The Investor may withdraw an application for compensation, but the

right to recover compensation will be lost for any acts covered by the application.

(a) There is no time limit on application for inconvertibility compensation (Article III); however, section 3.02 provides that compensation shall not exceed the Current Insured Amount in effect sixty days before OPIC receives the application.

(b) An application for expropriation compensation (Article V) must be filed within six months after the Investor has reason to believe that all requirements of Article IV have been satisfied.

(c) A notice demonstrating the Investor's entitlement to political violence compensation (Article VI) must be filed within six months of the loss. The notice together with proof of the amount of compensation due will be considered a completed application, which must be filed within three years of the loss. The Investor may request historical cost compensation (section 7.01(a)) and later amend the application within three years of the loss to elect replacement cost compensation (section 7.01(b)).

(d) OPIC shall have a reasonable time in which to complete processing of any application for compensation.

8.02 *Assignment to OPIC.* Within sixty days after OPIC notifies the Investor of the amount of compensation OPIC will pay under expropriation or political violence coverage, and prior to payment, the Investor shall transfer to OPIC all interests attributable to the insured investment (section 4.01) or funds (section 4.02) as of the date the expropriatory effect commences, including claims arising out of the expropriation, or claims arising out of the loss due to political violence (section 6.01). The Investor shall transfer the interests and claims free and clear of, and shall agree to indemnify OPIC against, claims, defenses, counterclaims, rights of setoff and other encumbrances (except defenses relating to the expropriation).

In connection with an inconvertibility claim, immediately upon receipt of instructions from OPIC, the Investor shall deliver the local currency to OPIC by draft subject to collection (or, at OPIC's option, in cash).

OPIC may decline all or any portion of the Investor's interests or claims; if so, the Investor's right to compensation shall be affected only as provided in (section 5.03.4(b)).

8.03 *Security.* As a condition for the payment of compensation, OPIC may require the Investor to provide reasonable security satisfactory to OPIC for repaying compensation [as may be

required, for example, by (section 7.06 or (section 9.02(b)).

8.04 *Excess Salvage Value.* With respect to compensated expropriation and political violence claims, OPIC shall pay to the Investor any amounts OPIC realizes in United States dollars from the rights transferred (section 8.02) in excess of

(a) The compensation paid by OPIC; plus

(b) Reasonable interest; plus

(c) OPIC's out-of-pocket expenses in maintaining and realizing funds from the transferred property.

However, this provision shall not in any way restrict OPIC's discretion to deal with the rights transferred. OPIC shall have no obligation to take action with respect to the rights transferred and shall incur no liability to the Investor for any actions taken or not taken after the transfer.

8.05 *Arbitration.* Any controversy relating to this contract shall be settled by arbitration in Washington, DC according to the then prevailing Commercial Arbitration Rules of the American Arbitration Association. Unless the Investor initiates arbitration, OPIC's liability shall expire one year after OPIC notifies the Investor of its determination concerning an application for compensation. A decision by arbitrators shall be final and binding, and any court having jurisdiction may enter judgment on it.

8.06 *Election of Amount of Coverage and Termination.* By prior notice to OPIC effective as of the next due date for premiums (section 1.06), the Investor may increase or decrease the Current Insured Amount or decrease the Maximum Insured Amount for any coverage for the remainder of the contract term, subject to the following limitations:

(a) Current Insured Amount shall not exceed Maximum Insured Amount;

(b) Maximum Insured Amount shall be reduced automatically by compensation paid by OPIC; Current Insured Amount shall also be reduced for the remainder of the annual election period to which the claim relates (section 3.02, section 5.04(a), or section 7.02(a));

(c) For expropriation coverage, Current Insured Amount shall not be less than the amount of compensation which would be due under section 5.01 unless a lower Maximum Insured Amount has been elected;

(d) For political violence coverage, Current Insured Amount shall not be less than the lesser of the Investor's share of

(1) original cost (section 7.01(a)(1)); or

(2) fair market value of the covered property unless a lower Maximum Insured Amount has been elected or OPIC and the Investor have agreed to a lower amount to take into account coverage under another OPIC contract.

The Investor may terminate this contract effective as of any premium due date unless the premium is already paid. However, termination shall not affect any rights or obligations of either party relating to prior periods.

8.07 *Legal and Miscellaneous.* This contract shall be governed by the law of the District of Columbia, its conflict of law rules excepted. This contract constitutes the complete agreement between the parties, superseding any prior understandings. This contract may be modified, or its terms waived, only in writing.

8.08 *Notices.* Notices must be in writing, and shall be effective when received. Notices may be given to the Investor at the address on the title page (unless changed in writing), and to OPIC at

Overseas Private Investment Corporation Washington, DC 20527, Attention: Vice-President, Insurance.

8.09 *Refund of Premiums.* Upon timely request, OPIC will refund premiums *pro rata* if

(a) Excess coverage is maintained while a valid claim for compensation is pending; or

(b) The Investor becomes ineligible for coverage or ceases to hold all or a portion of the insured investment.

Article IX—Investor's Duties

9.01 *Duties.*

1. *Representations and Project Execution.* The Investor understands that OPIC has issued this contract based on statutory policy goals (22 U.S.C. section 2191) as well as underwriting considerations. All statements made by the Investor to OPIC in connection with this contract are true and complete, and the investment and the project shall be carried out as described.

2. *Ownership and Eligibility.* The Investor shall at all times remain the beneficial owner of the insured investment and shall remain eligible for OPIC insurance as

(a) A citizen of the United States; or
(b) A corporation or other association created under the laws of the United States, its states or territories, of which more than 50% of both the total interest and of each class of shares is beneficially owned by citizens of the United States; or

(c) an entity created under foreign law in which a 95% interest is owned by entities eligible under (a) or (b).

3. *Self-Insurance.* The Investor shall continue to bear the risk of loss of at least 10% of the book value of its interest in the foreign enterprise.

4. *Assignment.* The Investor shall not assign this contract, or any of its rights, without OPIC's written consent, which will not be withheld unreasonably.

5. *Premiums.* The Investor shall pay the premiums for this contract in accordance with Article I. In the event that premiums are not paid when due, the Investor shall be in default but may cure this default within sixty days by paying the premiums plus interest at a rate of 12% per annum.

6. *Accounting Records.*

(a) The Investor shall maintain in the United States the records, books of account and current financial statements for the foreign enterprise necessary to compute and substantiate compensation, including

(1) Records documenting the investment;

(2) Annual balance sheets;

(3) Annual statements of income, retained earnings, changes in financial position and related footnotes.

(b) Accounting records shall be maintained in United States dollars in accordance with principles of accounting generally accepted in the United States (including principles of currency translation), as modified by the special accounting rules (section 5.03.3 and section 7.04(b)(3)).

(c) The Investor shall retain all accounting records until

(1) The deadline for filing an application for compensation has expired (section 8.01); or

(2) Final action has been taken on an application for compensation (including arbitration and judicial appeals).

However, if compensation has been paid, the accounting records shall be retained for three years after the Investor receives the compensation.

7. *Reports and Access to Information.* In order that OPIC may perform its statutory duties, including settling claims and reporting to the Congress (22 U.S.C. 2200a), the Investor shall furnish OPIC with such information as OPIC may reasonably request, including

(a) Making available for interviews any persons subject to the Investor's practical control (including employees of the project and independent accountants);

(b) Making available for inspection and copying all documents and accounting records relating to the project (including workpapers of independent accountants);

(c) Permitting OPIC to inspect the project; and

(d) Furnishing available information concerning the effects of the project on the economy of the United States, the environment, and the economic and social development of the country in which the project is located.

The Investor's duties under this paragraph shall continue for the periods specified for retention of accounting records (section 95.9.01.6(c)).

8. *Compulsory Notice.* The Investor shall notify OPIC promptly of any acts or threats to act in a manner which may come within the scope of the expropriation or political violence coverage (Articles IV and VI) and shall keep OPIC informed as to all relevant developments.

9. *Preservation, Transfer and Continuing Cooperation.* At OPIC's request, the Investor shall promptly assign rights with respect to the investment, as required by section 8.02. Prior to the assignment of rights required by section 8.02, the Investor shall take all reasonable measures to preserve property, to pursue available administrative and judicial remedies, and to negotiate in good faith with the governing authority of the country in which the project is located and other potential sources of compensation. After a transfer of rights or delivery of local currency, in exchange for reimbursement of reasonable out-of-pocket expenses, the Investor shall take all actions reasonably requested by OPIC to assist OPIC in preserving the property and rights transferred to OPIC and in prosecuting related claims.

10. *Other Compensation.* The Investor shall not enter into any agreement with any foreign governing authority with respect to compensation for any acts within the scope of coverage (Article II, IV or VI) without OPIC's prior written consent.

11. *Agreements Regarding Investment Disputes.* If any rights transferrable to OPIC (section 8.02) are subject to agreements providing for arbitration in a forum limited to non-governmental parties (such as the International Centre for Settlement of Investment Disputes), the Investor shall act as necessary to protect OPIC's interests.

9.02 *Default.* Material breach or misrepresentation by the Investor shall constitute default, and OPIC may

(a) Refuse to make payments to the Investor;

(b) Recover payments made; or

(c) Terminate this contract effective as of the date of the breach by giving notice to the Investor.

9.03 *Non-Waiver.* Neither OPIC's failure to invoke its rights, nor its acceptance of premiums, shall constitute

waiver of any of its rights, even though OPIC knows of the Investor's breach.

9.04 *Cure*. OPIC may permit the Investor to cure a breach in a manner satisfactory to OPIC, but shall have no obligation to allow breaches to be cured.

Investor

By: _____

Date: _____

(Name and Title)

Overseas Private Investment Corporation

By: _____

Date: _____

(Name and Title)

Elizabeth Burton,

Corporate Secretary.

[FR Doc. 86-1661 Filed 1-24-86; 8:45 am]

BILLING CODE 3210-01-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension

Bureau/Office: Bureau of Accounts

Title of Form: Quarterly Report of

Revenues, Expenses, Class I Railroads

OMB Form No.: 3120-0027

Agency Form No.: RE&I

Frequency: Quarterly

Respondents: Class I Railroads

No. of Respondents: 26

Total Burden Hrs.: 624

Type of Clearance: Extension

Bureau/Office: Bureau of Accounts

Title of Form: Quarterly Report of

Freight Commodity Statistics Class I Railroads

OMB Form No.: 3120-0031

Agency Form No.: QCS

Frequency: Quarterly/Annually

Respondents: Class I Railroads

No. of Respondents: 25

Total Burden Hrs.: 13,000

Type of Clearance: Extension

Bureau/Office: Office of Proceedings

Title of Form: Application for Authority under 49 USC to Acquire control of a motor carrier or carriers thru ownership of stock, or otherwise.

OMB Form No.: 3120-0100

Agency Form No.: OP-F-45

Frequency: Non-recurring

Respondents: Motor passenger carriers & non-carriers

No. of Respondents: 10

Total Burden Hrs.: 1,200

James H. Bayne,

Secretary.

[FR Doc. 86-1667 Filed 1-24-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 191X)]

Chicago and North Western Transportation Co.; Abandonment Exemption Between Maple River and Ida Grove, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Chicago and North Western Transportation Company filed a petition seeking an exemption under 49 U.S.C. 10505 from 49 U.S.C. 10903, *et seq.*, in connection with the abandonment of 38.4 miles of its line between Maple River and Ida Grove, IA. The Commission has determined that there should be notice and comment because the impact of the proposed abandonment cannot be ascertained from the present record. Also comments on the imposition of public use conditions and the use of the rail right-of-way on an interim basis for trails will be considered.

DATES: Comments may be filed with the Commission and served on petitioner's representative by February 26, 1986. Replies to the comments may be filed by March 18, 1986.

ADDRESSES: Send comments referring to Docket No. AB-1 (Sub-No. 191X) to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
- (2) Petitioner's representative: Robert T. Opal, Commerce Counsel, One North Western Center, Chicago, IL 60606

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

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

Decided: December 24, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley and Strenio. Commissioner Taylor did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 86-1666 Filed 1-24-86; 8:45 am]

BILLING CODE 7035-01-M

[Section 5a Application No. 1 ' Amdt. No. 8]

Agreement; Household Goods Carriers' Bureau, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Household Goods Carriers' Bureau, Inc. (HHGB), has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since some modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of HHGB's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave. NW., Washington, DC 20423, and from HHGB's representative: Thomas M. Auchincloss, Jr., 700 World Center Building, 918-16th Street, NW., Washington, DC 20006.

Copies of the complete Commission decision are available for inspection and copying at the Interstate Commerce Commission or may be purchased from TS Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, 12th St. and Constitution Ave., NW., Washington, DC 20423; or call toll-free (800) 424-5403, or (202) 289-4357 in the Washington, DC metropolitan area.

DATE: Comments from interested persons are due by February 26, 1986. Replies are due 15 days thereafter.

ADDRESS: An original and fifteen copies, if possible, of comments should be sent to: Section 5a Application No. 1, Office

¹ Section 5 was recodified as section 10706.

of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Harold Johnson, (202) 275-7971
and

Howell I. Sporn, (202) 275-7691

SUPPLEMENTARY INFORMATION:

Household Goods Carriers Bureau (HHGB) has filed an application for approval of its proposed amended collective ratemaking agreement as required by section 14(e) of the Motor Carrier Act of 1980, Pub. L. 96-296 (1980) (MCA). Since filing its application, HHGB has been obligated to observe the requirements of the MCA and the standards set forth in our decision implementing Section 14, found in Ex Parte No. 297 (Sub-No. 5), *Motor Carrier Rate Bureau Implementation of Pub. L. 96-296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981).

We have provisionally approved HHGB's agreement as consistent with 49 U.S.C. 10706(b) and Ex Parte No. 297 (Sub-No. 5), *supra*, subject to certain modifications including the following subject areas: identification and description of member carriers; right of independent action; employee docketing; open meetings; quorum standards; final disposition of cases; general standards for member voting and discussion of collectively established rates; singleline rates; general tariff increases or decreases; and zone of freedom rates. We have also offered comments and imposed requirements concerning the agreement generally. HHGB has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision provisionally approving the agreement.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and Ex Parte No. 297 (Sub-No. 5), *supra*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria generally, and their application to HHGB's agreement in particular.

A copy of any comments filed with the Commission shall also be served on HHGB, which shall have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that HHGB must submit to the Commission as a condition precedent to final approval of its agreement.

This action will not significantly affect either the quality of the human

environment or the conservation of energy resources.

This notice and accompanying decision are issued pursuant to 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: December 24, 1985.

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

James H. Bayne,
Secretary,

[FR Doc. 86-1724 Filed 1-24-86; 8:45 am]

BILLING CODE 7035-01-M

[Section 5a Application No. 92 Amdt. No. 3]

Agreement; Maine Motor Rate Bureau Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision on reconsideration.

SUMMARY: Pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), Maine Motor Rate Bureau (Maine) filed an application for approval of its collective ratemaking agreement under 49 U.S.C. 10706(b). In a decision noticed at 48 FR 53608 (1983), the Commission found Maine's revised ratemaking agreement to be inconsistent in several respects with the MCA and the decisions implementing it. The Commission noted the areas in which the agreement was deficient; ordered a revised agreement to be filed; and solicited public comment on its interpretation and application of specific rate bureau provisions. Maine's revised agreement has not been modified to the extent required by the Commission's earlier decision. The decision on reconsideration reviews the comments that were filed; modifies the language of the prior decision; extends provisional approval; and requires Maine to submit a fully consistent revised agreement.

DATES: This provisional approval of section 5a Application No. 92 (Amendment No. 3) will expire, and the application will be denied on March 25, 1986, unless prior to that date the Maine Motor Rate Bureau files a revised agreement complying with the requirements stated in the full decision. The decision is effective on the date served.

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 inspection and copying at the Interstate Commerce Commission, 12th Street and Constitution Ave., NW., Washington, DC, 20423, or may be purchased from TS Infosystems, Inc., Room 2229, Interstate Commerce Commission Building; or toll-free (800) 424-5403; or (202) 289-4357 in the Washington, DC, metropolitan area.

This notice and accompanying decision are issued pursuant to 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: December 24, 1985.

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

James H. Bayne,
Secretary,

[FR Doc. 86-1723 Filed 1-24-86; 8:45 am]

BILLING CODE 7035-01-M

[Section 5a Application No. 9]

National Bus Traffic Association, Inc.; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: National Bus Traffic Association, Inc. (NBTA), has filed, pursuant to section 10 of the Bus Regulatory Reform Act of 1982 (Bus Act), an application for approval of its rulemaking agreement under 49 U.S.C. 10706(b). Since several modifications are required before the agreement may be approved, and since new and complex questions are involved in determining whether the agreement is consistent with the Bus Act and the decision implementing it, the Commission will solicit public comment on its interpretation of NBTA's compliance with specific rate bureau provisions. Copies of NBTA's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave., NW., Washington, DC 20423, and from NBTA's representatives:

Charles A. Webb, 606 London House,
1001 Wilson Boulevard, Arlington, VA
22209

John A. Grady, 301 N. Fairfax St., Suite
100, Alexandria, VA

Copies of the complete Commission decision are available for inspection and copying at the Interstate Commerce Commission, or may be purchased from TS Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, 12th St. and Constitution Ave.,

NW., Washington, DC, 20423; or call toll-free (800) 424-5403, or (202) 289-4357 in the Washington, DC metropolitan area.

DATES: Comments from interested persons are due by February 26, 1986. Replies are due 15 days thereafter.

ADDRESS: An original and fifteen copies, if possible, of comments should be sent to: Section 5a Application No. 9, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

FOR FURTHER INFORMATION CONTACT:

Harold Johnson, (202) 275-7971

or

Howell I. Sporn, (202) 275-7691

SUPPLEMENTARY INFORMATION: National Bus Traffic Association, Inc. (NBTA), filed an application for approval of its proposed amended collective ratemaking agreement as required by section 10 of the Bus Regulatory Reform Act of 1982, Pub. L. 97-261 (1982) (Bus Act). During the time the proposed amended agreement was prepared for, submitted to, and considered by the Commission, NBTA has been obligated to observe the requirements of the Bus Act and the standards set forth in our decision implementing Section 10, found in Ex Parte No. 297 (Sub-No. 6), *Bus Rate Bureau Procedures*, 367 I.C.C. 313 (1983), to enjoy continuing antitrust immunity for collective activities.

We have provisionally approved NBTA's agreement as consistent with 49 U.S.C. 10706(b) and Ex Parte No. 297 (Sub-No. 6), *supra*, subject to certain modifications, including the following subject areas: identification and description of member carriers; right of independent action; rate bureau protests; employee docketing; open meetings; proxy voting; quorum standards; final disposition of cases; general standards for member voting; general rate increases or decreases; broad changes in tariff structure; promotional and innovative fares; and scope of collective activities. We have also offered comments and imposed requirements concerning the agreement generally. NBTA has been directed to file a revised agreement conforming to the conditions imposed within 120 days following service of the decision provisionally approving the agreement.

In light of the complex interpretation involved in determining whether the agreement is consistent with the Bus Act and Ex Parte No. 297 (Sub-No. 6), *supra*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria generally, and their application to NBTA's agreement in particular.

A copy of any comments filed shall also be served on NBTA, which shall have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that NBTA must submit to the Commission as a condition precedent to final approval of its agreement.

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

This notice and accompanying decision are issued pursuant to 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: December 24, 1985.

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

James H. Bayne,

Secretary.

[FR Doc. 86-1722 Filed 1-24-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-No. 96)]

Railroad Services Abandonment; Southern Pacific Transportation Co.; Los Angeles County, CA; Findings

The Commission has found that the public convenience and necessity permit the Southern Pacific Transportation Company to abandon its 2.512-mile line of railroad between Santa Fe Springs (milepost 497.00) and Whittier (milepost 500.212), in Los Angeles County, CA.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of the Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail

service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86-1760 Filed 1-24-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Grants; Availability; OJP Financial Guideline M7100.1C

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of Issuance of OJP Guideline Manual M7100.1C, Financial and Administrative Guide for Grants.

SUMMARY: The purpose of the Financial and Administrative Guide for Grants is to provide a reference source and guide for financial matters arising in the administration of assistance awards (grants and cooperative agreements) made pursuant to the following statutes: Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Victims of Crime Act of 1984, and Titles II and IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. The Guide identifies the Office of Justice Programs (OJP) agencies' financial management policies and procedures. These policies are designed to assure the establishment of sound and effective business management standards for agency grantees and subrecipients. The OJP agencies include the Office of Justice Programs, the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the Bureau of Justice Assistance (BJA), the National Institute of Justice (NIJ), and the Bureau of Justice Statistics (BJS). The Guide builds upon and complements the grant funding and administrative requirements established in the effective edition of the OJJDP formula and BJA block grant guidelines, the OJP agencies' program announcements for discretionary programs and projects, and other OJP agency guidelines. The new Guide supercedes M7100.1B, October 20, 1980. **EFFECTIVE DATE:** M7100.1C was effective November 1, 1985. It applies to: (1) All new assistance awards made by the OJP agencies on and after November 1, 1985; (2) all prior assistance awards which were made subject to the "current" or a "subsequent" edition of M7100.1, effective November 1, 1985; and (3) all actions on other assistance awards which occur on and after November 1, 1985.

FOR FURTHER INFORMATION CONTACT:

Michael C. Lynch, Financial Management and Grants Administration Division, Office of the Comptroller, Office of Justice Programs, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724-7584.

Richard B. Abell,

Deputy Assistant Attorney General, Office of Justice Programs.

[FR Doc. 86-1715 Filed 1-24-86; 8:45 am]

BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

Advisory Panel for the Decontamination of Three Mile Island Unit 2; Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI-2) will be meeting on February 12, 1986, from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 South Second Street, Harrisburg, PA. The meeting will be open to the public.

At this meeting, the Panel will receive a presentation by the U.S. Department of Energy on the plans for the shipment of fuel removed from damaged TMI-2 reactor to a DOE facility for interim storage. The Panel will also receive a status report on the progress of defueling and a presentation on the Strontium-90 measurement errors at TMI-2 from General Public Utilities Nuclear Corporation. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Cleanup Project Directorate, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492/7466.

Dated: January 22, 1986.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 86-1709 Filed 1-24-86; 8:45 am]

BILLING CODE 7590-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Open Meeting

Notice is hereby given of a meeting of the Subcommittee on Hospital Productivity and Cost Effectiveness of the Prospective Payment Assessment Commission Scheduled for Monday, February 10, 1986. The meeting will convene at 2:00 pm in the Diplomat room of the Shoreham Hotel, 2500 Calvert

Street, Northwest, Washington, DC., and will be open to the public.

Donald A. Young, M.D.,

Executive Director.

[FR Doc. 86-1786 Filed 1-24-86; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33-6620; File No. S7-286]

Securities Uniformity; Annual Conference on Uniformity of Securities Laws

AGENCY: Securities and Exchange Commission.

ACTION: Publication of release announcing issues to be considered at conference uniformity of securities laws, announcing a hearing and requesting written comments.

SUMMARY: In conjunction with a Conference to be held on March 10-11, 1986, the Commission and the North American Securities Administrators Association, Inc. today announced public hearings and published a request for comments on effectuating increased uniformity in matters concerning state and federal regulation of securities. This inquiry is intended to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, as adopted as part of the Small Business Investment Incentive Act of 1980, to maximize the effectiveness of securities regulations and reduce burdens on capital formation through increased cooperation between the Commission and the state securities regulatory authorities.

DATES: The Conference will be held on March 10-11, 1986. Hearings will commence on February 26, 1986 at 10:00 a.m. All witnesses are requested to submit 10 copies of their prepared statements no later than February 14, 1986. Written comments not prepared in connection with an oral presentation must be received on or before February 20, 1986 in order to be considered by the conference participants.

ADDRESSES: Hearings will be held at the headquarters of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Written submissions not prepared in connection with an oral presentation should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments should refer to File No. S7-286. All witnesses desiring to make oral presentations should submit copies of their prepared statements to the

Commission. Such materials should be directed to the attention of either Richard Wulff or Mary Jackley as specified below. All written submissions including the written texts submitted in connection with oral presentations and the transcripts of such oral presentations, will be available for public inspection at the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT:

Richard Wulff or Mary Jackley, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, (202) 272-2644.

SUPPLEMENTARY INFORMATION:

I. Discussion

A dual system of federal-state securities regulation has existed since the adoption of a federal regulatory structure in the Securities Act of 1933 (the "Securities Act").¹ Issuers attempting to raise capital through securities offerings, as well as participants in the secondary trading markets, are responsible for complying with federal securities laws as well as with all the appropriate state regulations. In recent years it has been recognized that there is a need to increase uniformity between federal and state regulatory systems and to improve cooperation among those regulatory bodies so that capital formation can be made easier while appropriate investor protections are retained.

The importance of facilitating greater uniformity in securities regulation was endorsed by Congress with the enactment of Section 19(c) of the Securities Act² in the Small Business Investment Incentive Act of 1980³ (the "Investment Incentive Act"). Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out the declared policy and purpose of section 19(c). The declared policy of the section is that there should be greater federal and state cooperation in securities matters, including: (1) Maximum effectiveness of regulation; (2) maximum uniformity in federal and state standards; (3) minimum interference with the business of capital formation; and (4) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small

¹ 15 U.S.C. 77a et seq.

² 15 U.S.C. 77s(c).

³ Pub. L. 96-77 (October 21, 1980).

business, and to diminish the costs of the administration of the government programs involved. In order to establish methods to accomplish these goals, the Commission is mandated to conduct an annual conference. The first such conference was held in September 1983, the second, in February 1985.

II. 1986 Conference

The Commission and the North American Securities Administrators Association, Inc. ("NASAA"),⁴ are planning the 1986 Conference on Federal-State Securities Regulation (the "Conference").

At the Conference, representatives from the Commission and NASAA will meet to discuss methods for enhancing cooperation in securities matters in order to improve the efficiency and effectiveness of both federal and state securities regulation. Attendance will be limited to representatives from the Commission and NASAA in an effort to maximize the ability of Commission and state representatives to engage in frank and uninhibited discussion. Representatives from the Commission and NASAA currently are in the process of formulating an agenda for the Conference. As part of that process, the public, securities associations, self-regulatory organizations, agencies, and private organizations are invited to participate through the submission of written comments, or by making oral presentations to a panel of Commission and NASAA representatives at the public hearing on February 26, 1986, which will later be considered by the Conference attendees, on the issues set forth below. In addition, comment is requested on other appropriate subjects that commentators wish to be included in the Conference agenda.

III. Tentative Agenda and Request for Comments

The tentative agenda for the Conference consists of the following selected topics in the areas of corporation finance, investment management, market regulation and oversight and enforcement.

(1) Corporation Finance Issues

a. Uniform Limited Offering Exemption. Congress specifically acknowledged the need for a uniform limited offering exemption in enacting section 19(c) of the Securities Act and authorized the Commission to cooperate with NASAA in its development.

Working with the states, the Commission developed Regulation D, the federal regulation governing exempt limited offerings. Regulation D was adopted by the Commission in March 1982. On September 21, 1983 NASAA endorsed a revised form of the Uniform Offering Exemption ("UOE") that is intended to coordinate with Regulation D.

UOE provides a uniform exemption from state registration for certain issuers. An issuer raising capital in a state which has adopted UOE may take advantage of both a state registration exemption and a federal exemption under Regulation D. To date, more than half of the states have adopted some form of UOE, although both the Commission and NASAA have made a concerted effort toward universal adoption of UOE. The Commission and NASAA hope to achieve the goal of uniformity envisioned by the statute. Comment is requested on approaches to achieve this goal and on other issues of uniformity of exemptions, including the joint Commission-NASAA interpretive process.

b. Disclosure Policy and Standards. The Commission has an ongoing program of considering, reviewing and revising its policies with regard to the most appropriate methods of ensuring the disclosure of material information to the public. In the past, coordination with the states has been beneficial in the development of guidelines for real estate offerings. Commentators are invited to discuss other areas where federal-state cooperation could be of particular significance, as well as any ways in which such federal-state coordination could be improved.

c. Takeover Regulations. The continuing high level of corporate tender offers and other takeover techniques makes discussion of state and federal issues relating to takeovers as well as the aftermath of such transactions appropriate at the Conference. The public is invited to comment on the appropriate role of state and federal regulators in the context of corporate takeovers.

d. Multinational Securities Offerings. In light of the increasing internationalization of securities markets the Commission published a release soliciting comments on methods of harmonizing disclosure and distribution practices for multinational offerings by non-governmental issuers.⁵

In this release, two methods for facilitating multinational offerings were considered. First, the reciprocal approach whereby the United States, Canada and the United Kingdom would agree that a prospectus accepted in an issuer's domicile which meets certain standards would be accepted for offerings in each of the participating countries. Second, the common prospectus approach whereby a common prospectus would be developed which would be simultaneously filed with each of the countries respective securities administrators.

Each of the fifty states have securities statutes which must be considered when attempting to institute multinational offerings. Comment is specifically requested on mechanisms which will facilitate such offerings in light of both federal and state securities laws.

(2) Investment Management Issues

a. Investment Companies. In 1984 NASAA adopted a number of resolutions supporting more uniform regulation of mutual funds and unit investment trusts. These resolutions encouraged states to adopt uniform, streamlined approaches to investment company registration and renewal procedures, the filing of advertising and sales reports and the treatment of oversales. The conferees will discuss the progress that has been made in implementing these resolutions and whether more uniform requirements may be appropriate in other areas of investment company regulation. Commentators are invited to address these matters and any other issues that should be addressed by NASAA and the Commission in the next year with respect to regulation of open and closed-end management investment companies and unit investment trusts.

b. Investment Advisers. In October 1985, NASAA and the Commission adopted a uniform adviser registration form for advisers registering with the Commission and those states that register advisers. New uniform Form ADV became effective January 1, 1986. The conferees will review the experience of the Commission and the states in implementing the new form and will consider uniform rules for filing amendments to the form and whether and how to use the Central Registration Depository ("CRD"), developed by the National Association of Securities Dealers ("NASD") and NASAA, or another clearing house facility to process adviser registration filings. The CRD is a computerized system used to register securities industry personnel with the NASD and the states. Persons

⁴ NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, the Canadian provinces and territories, and Mexico.

⁵ Securities Act Release No. 33-6568 (February 28, 1985) [50 FR 9281].

filing applications or amending registrations file one form and any required fees with the NASD which disseminates the information and fees electronically to the appropriate jurisdictions. Comment is requested on whether, and how, a central registration system for advisers should be developed, whether it should be developed in connection with the CRD or the Commission's Edgar system, and what cost-savings for advisers would result from a central registration processing system. As discussed below, participants in the sessions on Market Regulation Issues also will focus on the CRD.

The 1985 Conference recommended that the adviser registration form be tailored or clarified to obtain appropriate information and disclosure of the activities of investment advisers offering financial planning services and that the Commission staff and NASAA develop a uniform statement on the application of federal and state adviser laws to financial planners.⁶ The former recommendation was implemented in the adoption of uniform Form ADV and the conferees may discuss what, if any, preliminary data is available from the new form at the time of the Conference. While the joint release on the application of adviser laws will not be finalized by the time of the Conference, commentators are welcome to address this issue generically. The conferees also will discuss recent initiatives regarding self-regulatory organizations for investment advisers.

The conferees also expect to discuss efforts by the Commission and the states to increase the level of routine surveillance over the advisory industry through greater cooperation with regard to routine investment adviser inspections and NASAA efforts to develop uniform standards for investment advisers and their personnel. Comment is invited on these matters. Specific suggestions also are welcome for other areas relating to investment advisers where Commission-NASAA cooperation could reduce unnecessary regulatory burdens or maximize regulatory effectiveness.

(3) Market Regulation and Oversight Issues

a. *Central Registration Depository.* As indicated above, the NASD and NASAA have jointly developed the CRD, a computerized system for the registration of securities industry personnel with the NASD, the New York Stock Exchange

and the various state securities commissions. Persons filing applications or amending registrations file one form and any required fees with the NASD which disseminates the information and fees electronically to the appropriate jurisdictions. Phase I of the system, which has been in place for several years, provides for the registration of registered representatives through the filing of Form U-4 with the CRD, as well as means for updating information with respect to these representatives and for facilitating transfer of registration under certain circumstances. Implementation of Phase II which will enable the CRD to handle the registration of broker-dealers as well as annual renewal of such registrations is expected to commence in February 1986.

During the sessions, participants will focus on future uses of the CRD by the states, the relationship of the Commission to the CRD (including the possible processing of broker-dealer registrations with the Commission through the system), and the impact of CRD on the development of the Commission's Edgar system.

Commentators are requested to address the effectiveness and efficiency of the CRD (including any suggestions for improving the system) as well as the future direction of the system.

b. *Forms Revision.* During 1985, the Commission and NASAA participated in a number of joint projects relating to the revision of existing forms and the development of new uniform forms. The NASAA Forms Revision Committee, assisted by representatives of the Commission, the securities industry and the self-regulatory organizations, completed work during the year on major revisions to Forms U-4 and U-5, the uniform forms used to register securities sales persons and terminate such registrations. NASAA and the Commission also approved changes in Form BD, the uniform form used to register broker-dealers, designed to simplify the form and conform the disciplinary questions contained therein with those in Form U-4. The changes represented a significant improvement in all of the forms and represented the first effort at drafting such forms in "plain English." During 1986, NASAA and the Commission expect to adopt simplifying revisions to Form BDW, the form used to withdraw from broker-dealer registration. Commentators are encouraged to address any aspect of the forms revisions which have been adopted or are contemplated.

c. *National Market System Exemption from Registration.* Most state securities laws currently provide an exemption

from their securities registration requirements to issuers choosing to list on the New York or American Stock Exchanges or, in various cases, certain regional stock exchanges. Recently, several states have extended these exemptions to include over-the-counter securities designated pursuant to Commission rule as National Market System ("NMS") securities.

Commentators are asked to address whether the states should generally exempt from registration exchange-listed securities, particularly in light of possible changes to listing standards with respect to corporate governance. Also, commentators are requested to address whether any exemption for NMS securities should be conditioned on the NASD adopting corporate governance standards. Finally, commentators are asked to address whether such exemptions should apply to initial public offerings.

d. *Government Securities Regulation.* In the wake of the failure in recent years of a number of small unregistered government securities dealers, resulting in substantial losses to investors, several proposals for greater regulation of government securities markets have emerged. A bill creating a government securities rulemaking body and requiring dealer registration has passed the U.S. House of Representatives⁷ Several bills have also been introduced in the Senate.⁸ In addition, oversight of institutional investors in the government securities market has been increased on the federal and state levels. Commentators are asked to address the continuing need for regulation of the government securities markets and steps that can be taken on the national and state levels to ensure the integrity of these markets.

e. *Internationalization of the Securities Markets.* The world's securities markets are increasingly becoming international in orientation, with securities being issued simultaneously in different countries, and with securities trading concurrently in the securities markets of more than one country. In view of these developments, the Commission has sought comment on the direction of the internationalization of the trading markets. Commentators are asked to address steps that would be useful on the national and state levels to facilitate international markets while protecting

⁷ H.R. 2032, 99th Cong., 1st Sess. (September 17, 1985).

⁸ S. 1416, 99th Cong., 1st Sess. (July 10, 1985); S. 936, 99th Cong., 1st Sess. (April 17, 1985).

⁶ Such uniform statement would be modeled after the Commission's Investment Advisers Act Release No. IA-770 (August 13, 1981) [46 FR 41771].

the fairness and integrity of the U.S. securities markets.

f. *Immobilization.* The Commission has identified as a major goal the increased immobilization, and where appropriate, elimination of securities certificates. NASAA has established a Securities Immobilization Committee to pursue initiatives that will advance the use of book-entry recordkeeping systems and will accelerate the immobilization of securities certificates in securities depositories. At the conference, Commission staff members will meet with the Committee to review goals to be achieved, to discuss book-entry initiatives begun by various banking and securities industry groups, and to address immobilization issues that may be of particular interest or concern to state securities law administrators. During the sessions, staff of the Commission and members of the Committee will also try to identify ways in which the Committee can help secure needed changes in state laws and regulations to ensure greater use of safe and efficient book-entry ownership systems. The sessions will also review ways the Committee can increase public investor awareness of the characteristics of book-entry ownership systems (including transfer-agent-operated investor ownership registration systems).

Comment is requested on initiatives the NASAA Committee can pursue to promote expanded use of safe and efficient book-entry ownership registration and transfer systems.

g. *Rule 3b-9.* On July 1, 1985, the Commission adopted Rule 3b-9 under the Securities Exchange Act of 1934 (the "Exchange Act")⁹ which became effective January 1, 1986. That rule requires banks that conduct certain kinds of securities business, such as the public solicitation of brokerage transactions, to conduct that business through a registered broker-dealer. Comment is requested on what, if any, unique steps are required to implement the rule on the state level.

h. *Installment sales.* In November 1984, the Commission proposed Rule 3a12-9 under the Exchange Act for public comment.¹⁰ Subject to certain conditions, the rule would permit direct participation programs to be sold publicly on a mandatory installment basis. Currently, interpretations of the credit regulations have prohibited such sales. If the Commission adopts the rule in some form, comment is requested on

the manner in which the rule should be implemented on the state level.

(4) Enforcement Issues

In addition to the above stated topics, the state and federal regulators will discuss various enforcement related issues which are of mutual interest.

(5) Edgar

The Commission currently is operating a Pilot electronic disclosure system, Edgar. From its inception, the Commission has worked with NASAA to explore the possibility of a single filing in Edgar constituting the required filing with the states. Three states, California, Georgia and Wisconsin, were designated by NASAA to participate in the Pilot, and they began receiving access to public Edgar filings in their offices in February 1985.

The Commission now is proceeding to develop the operational Edgar system in which most filings with the Commission will be made electronically.

The conferees will discuss the relationship of NASAA to this system and the goal of one-stop filing. Commentators are invited to discuss approaches to achieving this goal.

(6) General

There are a number of matters which are applicable to all or a number of the disciplines noted above. These include the coordination of Commission rulemaking procedures with the states, the training and educating of staff examiners and analysts, the sharing of information, CRD, and the Commission's Edgar system.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commentators should focus on the agenda but may also discuss or comment on other areas in which the existing scheme of state and federal regulation can be made more uniform while high standards of investor protection are maintained.

IV. Procedures

(1) Written Submissions

Interested persons are invited to submit their views on the foregoing no later than February 20, 1986. Written submissions should be made in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Please refer to File No. S7-286.

(2) Oral Presentations

Public hearings on the foregoing will commence at 10:00 A.M. on February 26, 1986 at the headquarters of the

Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Any interested person desiring to make a presentation at the hearings is requested to call or write Richard Wulff or Mary Jackley on or before February 14, 1986, as specified above. All witnesses are requested to submit 10 copies of their prepared statements by February 14, 1986.

By the Commission.

John Wheeler,

Secretary.

January 21, 1986.

[FR Doc. 86-1729 Filed 1-24-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice LM-8/928]

Chairman's Ad Hoc Group on Communications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Chairman's Ad Hoc Group on International Communications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 11, 1986 at 10:30 A.M. in Room 1406, Department of State, 2210 C Street, NW., Washington, DC.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities. The Ad Hoc Group on International Communications Development reviews issues pertaining to the improvement and/or expansion of the communications infrastructure in developing countries.

The purposes of the meeting on February 11 will include the designation of a chairman for the Ad Hoc Group. In addition, the Ad Hoc Group will review the status of United States support for the Center and make recommendations regarding appropriate United States positions on the agenda items to be considered at the next meeting of the Center's Advisory Board in April in Geneva. Participants are also invited to make contributions for establishing data bases concerning telecommunications training opportunities open to foreign participants and of equipment suppliers that can be provided to the International Telecommunication Union for dissemination to developing countries.

Members of the general public, specifically representatives of the

⁹ Release No. 34-22205 (July 1, 1985) [50 FR 28385].

¹⁰ Release No. 34-21495 (November 16, 1984) [49 FR 46556].

telecommunications industry and those who are concerned with telecommunications development issues in developing countries, are invited to attend the meeting and join in the discussion, subject to the instructions of the Chairman. Attendance will be limited to the seating available. All attendees must use the C Street entrance to the building. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. All persons wishing to attend should call (202) 647-1007.

Requests for further information should be directed to Mr. D. Clark Norton, Department of State, telephone (202) 647-1007.

Dated: January 22, 1986.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86-1432 Filed 1-24-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 43742, order 86-1-38]

Aviation Proceedings; Amendment of Foreign Air Carrier Permit and Exemption Authority; Order To Show Cause

Issued by the Department of Transportation on the 21st day of January, 1986.

By this order, the Department of Transportation directs interested persons to show cause why it should not amend all foreign air carrier operating authority to make it clear that the required waiver of sovereign immunity extends to all of a foreign carrier's air service operations, whether or not those activities take place within foreign air transportation as defined in the Federal Aviation Act. The proposed action is limited to clarifying the scope of a condition currently imposed on the operations of foreign air carriers, and is not intended to affect any other aspect of a foreign carrier's operations, including its right to raise other legal defenses, such as jurisdictional arguments.

Background

Recent world events have highlighted the need for the United States to examine closely the protections afforded U.S. citizens traveling in international air transportation. Accordingly, we have been examining many of the terms

under which foreign air carriers operate to the United States.

U.S. citizens, as well as others, have been the victims of vicious terrorist attacks and tragic airline disasters. Some of these Americans were traveling on foreign airlines between two foreign points, under circumstances which would not constitute "foreign air transportation" within the meaning of the Federal Aviation Act.

We expect that some U.S. citizens injured in these incidents will seek recovery from the airlines pursuant to the Warsaw Convention, which governs the recovery of damages by those injured while traveling in international air transportation.¹ Recent pleadings filed with the Department have brought to our attention a possible ambiguity in one of the terms under which foreign airlines operate to the United States which could undermine the ability of U.S. citizens to recover under the Convention. We have tentatively decided to clarify that term.²

Under standard practice, every foreign air carrier operating to the United States today is required to relinquish its right to the defense of sovereign immunity as a condition of holding operating authority under the following standard condition:

[The holder shall] Waive any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against it in any court of other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations under this [permit or exemption].³

This condition was first imposed in 1951 by the CAB, which stated:

[a]s a matter of policy . . . proper protection of shippers and the traveling public requires that insofar as practicable a foreign air carrier shall not enjoy immunity from suit any more than does a domestic air carrier.⁴

This condition reflects our policy that an airline enjoying the benefits of operating in the U.S. market should also be subject to the responsibilities that attach to doing business in the United States, and seeks to place governments operating commercial enterprises on an equal footing with private entrepreneurs engaged in the same activities. However, the exact words of the condition make it possible to argue that

¹ Warsaw Convention, October 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11.

² Motions dated June 7, and July 2, 1985 in Docket 38066, and Answer dated July 3, 1985 in Docket 38034.

³ E.g., Orders 85-11-5, 85-9-15, 85-9-21, and 85-9-22.

⁴ *El Al Israel Air, Amendment of Permit*, 14 C.A.B. 962 (1951).

the CAB intended that the waiver should be limited to claims arising out of a carrier's operations to and from the United States made possible as a result of the permit or exemption.

We think that such a narrow interpretation would be contrary to the CAB's intent, as quoted above. Moreover, even if the CAB had intended to limit the waiver to operations clearly in foreign air transportation, we do not agree that the waiver should be so limited. We think that the public interest, and U.S. international aviation policy, demand that foreign air carriers owned by foreign governments waive any claims they may otherwise enjoy to claim sovereign immunity in U.S. courts, whether or not the particular air service activity complained of takes place between the United States and some foreign place, or between two foreign places.

We think that the requirement that airlines be commercially liable for their airline activities in U.S. courts is reasonable. It is consistent with U.S. law and policy, as set forth in the Foreign Sovereign Immunities Act and enunciated by U.S. courts and administrative agencies.⁵ An airline is universally recognized to be a commercial enterprise, and most foreign carriers benefit substantially from their U.S. operations. Accordingly, they should not be permitted to avoid the obligations and responsibilities that are a part of operating a business. The logic of this principle is not diluted by the fact that the airline's action took place in the context of operations between foreign points rather than directly between a foreign point and a point in the United States.

Our position also comports with customary international law.⁶ Although

⁵ *Verlinden v. Central Bank*, 461 U.S. 480 (1983); *El Al Israel Air, Amendment of Permit*, 14 C.A.B. 962 (1951); letter from Jack B. Tate to U.S. Attorney General, 25 Dep't of State Bull. 984 (1952), reprinted in *Dunhill v. Cuba*, 425 U.S. 682, 711 (1976) (hereinafter cited as the Tate letter).

For the most part, the Foreign Sovereign Immunities Act (FSIA) adopts the restrictive theory of sovereign immunity, under which immunity is confined to suits involving the foreign sovereign's public acts and does not extend to cases arising out of its strictly commercial acts. Foreign Sovereign Immunities Act of 1976, Pub. L. 94-583, 90 Stat. 2892 (codified in various sections of 28 U.S.C.).

⁶ State Immunity Act, 1978 (United Kingdom); *Qureshi v. U.S.S.R.*, 33 All Pakistan Legal Decisions 377 (Sup. Ct. 1981), reprinted in 20 International Legal Materials 1060 (1981).

Asian-African Legal Consultative Committee, 3rd Sess., Colombo, Ceylon, Final Report of the Committee on Immunity of States in respect of Commercial and Other Transactions of a Private Character 66-68 (1960), excerpted in 6 Whiteman, Digest of International Law 572-74 (1968).

Continued

the precise interpretation of the extent to which one government will grant immunity from suit to another varies among the nations, one principle seems clear: there is an international consensus that immunity of a sovereign from suit should be restricted to its public, or sovereign, acts (*jure imperii*). On the other hand, suits arising from the private activities of a sovereign (*jure gestionis*) should not be immune from suit.

Finally, we are very concerned that the ability of a foreign air carrier to claim sovereign immunity for its air service operations could prove disruptive to international civil aviation. The vast majority of non-U.S. airlines are instrumentalities of foreign governments. The United States has entered into multilateral agreements which stipulate in great detail the commercial responsibilities of airlines providing international air transportation. Indeed, the United States is now considering ratification of the Montreal Protocols to the Warsaw Convention, which, if adopted, would permit U.S. citizens to sue foreign airlines in U.S. courts regardless of whether the air transportation has any connection with the United States, so long as the carrier maintains an establishment in the United States.⁷

This carefully negotiated international scheme would be entirely frustrated if foreign airlines could avoid liability by claiming sovereign immunity. Indeed, since most foreign airlines are owned by foreign governments, conventions such as Warsaw would prescribe rules which apply only to U.S. airlines and the few foreign airlines that are privately owned. Continued U.S. participation in international civil aviation accords and multilateral agreements like the Warsaw Convention might be disrupted or

jeopardized if foreign airlines were able to assert sovereign immunity in our courts.

Proposed Department Action

Because there is a possibility that the language currently used in foreign air carrier permits and other operating authorities may be subject to misunderstanding or misinterpretation, we have tentatively concluded that the language of our standard condition requiring a waiver of sovereign immunity should be clarified.

We propose to amend the standard condition contained in all foreign air carrier permits and all temporary exemption authority granted to all foreign air carriers so that it will read as follows:

Waive any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against it in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder of this [permit] [exemption].

(Change underlined). By so doing, we are making it clear that foreign air carriers may not seek sovereign immunity in U.S. tribunals for their air service activities, regardless of whether those activities took place within "foreign air transportation". Accordingly, the waiver of sovereign immunity applies to all such litigation brought in U.S. courts, whether or not it is pending at the time the order is made final.

As stated at the beginning, our action here does not reflect any position on the propriety of asserting any other defense to which a foreign air carrier may be legally entitled, including jurisdictional defenses available under the Warsaw Convention. Such defenses are available equally to U.S. air carriers, privately held foreign carriers and government-owned foreign carriers.

Nor are we deciding whether the provisions of the Foreign Sovereign Immunities Act would otherwise exclude foreign air carriers from the general grant of sovereign immunity, or whether any particular carrier is or should be held liable to any plaintiff. We are merely tentatively concluding that the public interest requires that any foreign air carrier that enjoys the benefits of commercial operations to the United States must waive sovereign immunity in U.S. courts in suits arising from their air service operations.

This order shall be served on all foreign air carriers. Those carriers and any other interested persons are invited to file comments on this order in accordance with the terms of the ordering paragraphs below.

Accordingly

1. We direct all interested persons to show cause why we should not issue an order: (a) Making final the tentative findings and conclusions of this order and (b) amending the operating authorities of all foreign air carriers to clarify the terms of the required waiver of sovereign immunity in the manner indicated above;

2. We direct all interested persons having objections to the issuance of an order making final our proposed findings and conclusions to file their objections with the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590 in Docket 43742 and serve them upon all persons listed in paragraph 5 below, no later than 10 days (i.e. February 3, 1986) after the date of service of this order. Answers to such objections shall be filed no later than 15 days (i.e. February 10, 1986) after the date of service of this order;

3. If timely and properly supported objections are filed, we will give consideration to the matters and issues raised by the objections before we take further action; provided, that we may proceed to enter an order in accordance with our tentative findings and conclusions set forth in this order if we determine that there are no factual issues present that warrant the holding of an oral evidentiary hearing or the institution of discovery procedures;⁸

4. In the event no objections are filed, we will deem all further procedural steps to have been waived, and an order will be entered which shall: (1) Make final our tentative findings and conclusions; and (2) subject to the disapproval of the President under section 801(a) of the Act, amend the operating authorities of all foreign air carriers to clarify the terms of the required waiver of sovereign immunity;

5. We will serve a copy of this order on all parties to Dockets 38066 and 38034, on all foreign air carriers, the Air Transport Association, the International Air Transport Association and the U.S. Departments of State and Justice; and

6. We will publish this order in the Federal Register.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-1653 Filed 1-24-86; 8:45 am]

BILLING CODE 4910-62-M

⁸ Because we have provided for the filing of objections to our tentative findings and conclusions, we will not entertain petitions for reconsideration of this order.

Representatives from Burma, Ceylon, India, Indonesia, Iraq, Japan, Pakistan, Sudan, Syria, and the United Arab Republic comprised the Asian-African Legal Consultative Committee.

European Convention on States Immunity, entered into force June 11, 1976. The following States ratified the Convention: Austria, Belgium, Cyprus; the following states have signed the Convention: the Federal Republic of Germany, Luxembourg, the Netherlands, and the United Kingdom.

⁷ The Warsaw Convention, Article 28, provides that an action for damages may be brought either before a court: (1) Of the carrier's domicile; (2) at the carrier's principal place of business; (3) where the carrier has a place of business through which the ticket was bought, or (4) at the place of destination. The 1971 Guatemala Protocol (ICAO Doc. 9040-LC/168-2 at 191), Article XII, added as a fifth place of jurisdiction the court where the carrier has an establishment if the passenger also has his or her domicile or permanent residence there. The Guatemala Protocol is incorporated by reference into the 1975 Montreal Protocol No. 3, Article VII (ICAO Doc. 9151-LC/171-2 at 270).

Coast Guard

[CGD 86-007]

Information Concerning the Availability of Voluntary Uninspected U.S. Commercial Fishing Vessel Safety Standards**AGENCY:** Coast Guard, DOT.**ACTION:** Notice.

SUMMARY: The U.S. Coast Guard has developed a series of Navigation and Vessel Inspection Circulars (NVICs) establishing proposed voluntary vessel safety standards for U.S. uninspected commercial fishing vessels. These standards are advisory in nature and do not modify or supersede any existing or future laws or regulations. The NVICs, which are technical in nature and written for fishing vessel designers, builders, naval architects, marine surveyors, insurance underwriters and vessel owners, are available through the Government Printing Office (GPO). Comments and recommendations concerning these standards from interested parties are encouraged. The NVICs will be consolidated into a final NVIC in June 1986 after time has elapsed for the Coast Guard to consider comments.

DATE: Comments are requested by 15 March 1986.

FOR FURTHER INFORMATION CONTACT: LCDR William J. Morani Jr., Fishing Vessel Safety Task Force, (G-MTH-F/V), Room 1407, U.S. Coast Guard Headquarters, 2100 Second St., SW, Washington, DC 20593; (202) 426-4431.

SUPPLEMENTARY INFORMATION: It is generally acknowledged that commercial fishermen are engaged in one of the most hazardous of all occupations. It has the poorest safety record of all U.S. industries. In response to this poor safety record the Commandant of the Coast Guard recommended a fishing vessel safety initiative to the Secretary of Transportation to reduce the number of casualties. The Coast Guard formed a full time Fishing Vessel Safety Task Force under the direction of the Chief, Office of Merchant Marine Safety to develop the initiative. With the Secretary's support and approval the initiative has developed into a total voluntary program.

The Fishing Vessel Safety Task Force developed proposed voluntary fishing vessel safety standards which cover topics on stability; radio and shipboard navigation equipment; fire safety measures; lifesaving equipment and

protection of the crew; and hull, machinery, and electrical installations. Navigation and Vessel Inspection Circulars (NVICs) 5-85 through 9-85 respectively. These NVICs, which are not intended to modify or supersede any existing or future laws or regulations, can be obtained by sending a check or money order (\$1.75 domestic, \$2.20 foreign for each NVIC) payable to the "Superintendent of Documents, Government Printing Office." Send orders to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Boat builders, marine surveyors, insurance underwriters, fishing vessel owners, operators, industry associations, and other interested parties are encouraged to adopt and implement these voluntary standards. In order to make them responsive, the Coast Guard is encouraging comments on the adequacy and applicability of these voluntary standards by 15 March 1986. Send comments to Commandant (G-MTH-F/V), 2100 Second St., SW, Washington, DC 20593. The Coast Guard will evaluate industry recommendations and consolidate the five NVICs into one final NVIC between 1-9 June 1986.

Dated: January 15, 1986.

J.W. Kime,

Rear Admiral (Lower Half), U.S. Coast Guard Chief, Office of Merchant Marine Safety.

[FR Doc. 86-1693 Filed 1-24-86; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Docket No. 23634]

Regulatory Negotiation Advisory Committee for Flight and Duty Time Rulemaking; Termination

Notice is hereby given of the termination of the Regulatory Negotiation Advisory Committee for Flight and Duty Time Rulemaking. The committee was sponsored by the Office of Flight Operations, Federal Aviation Administration (FAA), to develop a report including a recommended rulemaking proposal concerning flight time, duty time, and rest requirements for flight crewmembers engaged in air transportation. The committee's charter has expired and the committee has been terminated, as its continuation is no longer in the public interest in connection with the performance of the duties imposed on the FAA by law.

Issued in Washington, DC, on January 17, 1986.

Fred Laird,

Acting Manager, Safety Regulations Division, Office of Program and Regulations Management.

[FR Doc. 86-1662 Filed 1-24-86; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration**Environmental Impact Statement; San Diego County, CA**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in San Diego County, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A Cook, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: (916) 551-1307.

SUPPLEMENTARY INFORMATION: The FHWA, in corporation with the California Department of Transportation (Caltrans), will prepare an EIS on a proposal to construct a 4-mile segment of adopted State Route 125 from Fletcher Parkway in the City of La Mesa to Mission Gorge Road in the City of Santee near the junction with future Route 52. (Route 52 location and environmental studies are in progress). The proposed Route 125 project is part of a Route 125/52 "North Inner Loop" freeway proposed in the 1984 Regional Transportation Plan to relieve congestion of Interstate Route 8. This "loop" is forecast to carry 70,000-90,000 average daily traffic by the year 2005. Alternatives for this project presently consist of a multi-lane freeway on the State adopted alignment and a No Project Alternative.

Scoping meeting will be arranged with all responsible/cooperating agencies and with special interest groups upon request. In addition at the time of Draft EIS circulation, a public hearing will be held. Public notice will be given as to the time and place of the hearing. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: January 17, 1986.
Michael A. Cook,
District Engineer.
 [FR Doc. 86-1657 Filed 1-24-86; 8:45 am]
 BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on February 26 & 27, 1986. The meeting will be held in the Fresno Service Center. The building is located at 5045 E. Butler Avenue, Fresno, California. The meeting will begin at 9:00 A.M. on Wednesday, February 26 and 9:00 A.M. on Thursday, February 27. The agenda will include the following topics:

Wednesday, February 26, 1986

Mission and Management of a Service Center; Operation of the Service Center

Thursday, February 27, 1986

Management in the 90's; Proposal for Revision of 1986, Form 5500; Problem

Resolution Program; Collection Notice Study, 1986 Filing Period

Due to the service center's security requirements and limited conference space, notification of intent to attend the meeting must be made with George O'Hanlon, Executive Secretary, no later than February 18, 1986. Mr. O'Hanlon may be reached on (202) 566-4235 (not toll-free).

If you would like to have the Committee consider a written statement, please call or write George O'Hanlon, Executive Secretary, 1111 Constitution Ave., NW., Room 3308, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

George O'Hanlon, Executive Secretary, (202) 566-4235 (Not toll-free).

Roscoe L. Egger, Jr.,

Commissioner.

[FR Doc. 86-1731 Filed 1-21-86; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and

Hearing Rules, Station Committee on Educational Allowances that on February 20, 1986, at 1:00 P.M. the Hartford Regional Office Station Committee on Educational Allowances shall at 450 Main Street, Hartford CT 06103, Room 128 conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Southern Illinois University at Carbondale, Naval Submarine Base, Box 74, Groton, CT 06349 should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: January 15, 1986.

Robert E. Schloendorn,

Director, VA Regional Office.

[FR Doc. 86-1669 Filed 1-24-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 51, No. 17

Monday, January 27, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY CREDIT CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 2785, January 21, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 3:00 p.m., January 24, 1986.

STATUS: Rescheduled for Monday, February 10, 1986, at 10:00 a.m., Room 104-A Administration Building. Agenda to be announced.

CONTACT PERSON FOR MORE

INFORMATION: Richard A. Ashworth, Secretary, Commodity Credit Corporation, Room 3086 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 447-8165.

Dated: January 23, 1986.

Richard A. Ashworth,

Secretary, Commodity Credit Corporation.

[FR Doc. 86-1827 Filed 1-23-86; 3:55 pm]

BILLING CODE 3410-05-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, January 29, 1986.

LOCATION: Third Floor Hearing Room, 1111-18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Disposal Cigarette Lighters

The Commission will consider whether to authorize an analysis of the hazard presented by disposal lighters to young children.

2. Voluntary Standards Status Report

The staff will brief the Commission on information presented in recent status reports on voluntary standard projects.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

January 22, 1986.

[FR Doc. 86-1808 Filed 1-23-86; 12:43 pm]

BILLING CODE 6355-01-M

3

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, January 30 1986.

LOCATION: Room 456 Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

FY 1986 Budget/Gramm-Rudman-Hollings

The Commission will consider issues related to the 1986 Fiscal Year Budget and the impact of the Gramm-Rudman-Hollings Act.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Burns, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Burns, Deputy Secretary.

January 23, 1986.

[FR Doc. 86-1809 Filed 1-23-86; 12:44 pm]

BILLING CODE 6355-01-M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time), Monday, February 3, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE

INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated: January 22, 1986.

Cynthia C. Matthews,

Executive Officer Executive Secretariat.

This Notice Issued January 22, 1986.

[FR Doc. 86-1756 Filed 1-23-86; 11:01 am]

BILLING CODE 6750-06-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:32 p.m. on Friday, January 17, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First Progressive Bank, Metairie, Louisiana, which was closed by the Commissioner of Financial Institutions for the State of Louisiana on Friday, January 17, 1986; (2) accept the bid for the transaction submitted by First Industrial Bank & Trust Company, Metairie, Louisiana, a newly-chartered State nonmember bank; (3) approve the applications of First Industrial Bank & Trust Company, Metairie, Louisiana, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in First Progressive Bank, Metairie, Louisiana; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

At that same meeting, the Board also considered a personnel matter.

In calling the meeting, the Board determined, on motion of Chairman L.

William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. John F. Downey, acting in the place and stead of Director Robert L. Clarke (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)).

The meeting was recessed at 3:35 p.m., and at 5:45 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors adopted a resolution (a) making funds available for the payment of insured deposits in American Bank of Casper, Casper, Wyoming, which had been closed by the Wyoming State Examiner on Friday, January 17, 1986; (b) accepting the bid of Hilltop National Bank, Casper, Wyoming, for the transfer of the insured and fully secured or preferred deposits of the closed bank; and (c) designating Hilltop National Bank, Casper, Wyoming, as the agent for the Corporation for the payment of insured and fully secured or preferred deposits of the closed bank.

At that same meeting, the Board also considered a recommendation regarding the initiation of an administrative enforcement proceeding against an insured bank: name and location of bank authorized to be exempt from disclosure pursuant to the provision of subsections (c)(8) and (c)(9)(A)(iii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(A)(iii)).

In reconvening the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. John F. Downey, acting in the place and stead of Director Robert L. Clarke (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)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 22, 1986.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 86-1788 Filed 1-23-86; 12:41 p.m.]
BILLING CODE 6714-01-M

6

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 22, 1986.

TIME AND DATE: 10:00 a.m. Wednesday, January 29, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Jim Walter Resources, Inc., Docket No. SE 84-79. (Consideration of Petition for Discretionary Review).
2. Ozark-Mahoning Co., Docket No. LAKE 84-96-M. (Issues include whether the administrative law judge properly found that the operator violated 30 CFR 57.15-14, a mandatory safety standard dealing with the wearing of safety glasses, and that the violation was significant & substantial).
3. Jimmy R. Mullins v. Beth-Elkhorn Corp., etc., Docket No. KENT 83-268-D. (Consideration of procedural motions).
4. Robert Simpson v. Kenta Energy, Inc., etc., Docket No. KENT 83-155-D. (Consideration of motion to reopen).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE

INFORMATION: Jean Ellen (202) 653-5632.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 86-1783 Filed 1-23-86 12:40 pm]
BILLING CODE 6735-01-M

7

POSTAL SERVICE

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, February 4, 1986, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

Agenda

Tuesday Session

February 4, 1986—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 6-7, 1986.
2. Remarks of the Postmaster General.
3. Appointment of Committee Members by Chairman.
(The Bylaws provide that the Chairman shall select and appoint the Chairmen and members of the several committees of the Board.)
4. Consideration of Rates for Preferred Rate Mail.
5. Quarterly Report on Financial Performance.
(Mr. Cummings, Senior Assistant Postmaster General, Finance Group, will present the quarterly summary on financial performance.)
6. Quarterly Report on Service Performance.
(Mr. Campbell, Assistant Postmaster General, Mail Processing Department, will present the quarterly summary on service performance.)
7. Consideration of a request to the Postal Rate Commission for an advisory opinion on a change in the nature of COD service.
(Ms. Uemoto, Assistant Postmaster General, Rates and Classification, will present this item.)
8. Capital Investments:
 - a. Extension of lease for Southern Region headquarters.
 - b. Flat sorters.
9. Tentative agenda for March 3-4, 1986, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 86-1747 Filed 1-23-86; 12:39 pm]

BILLING CODE 7710-12-M

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Federal Register

Vol. 51, No. 17

Monday, January 27, 1986

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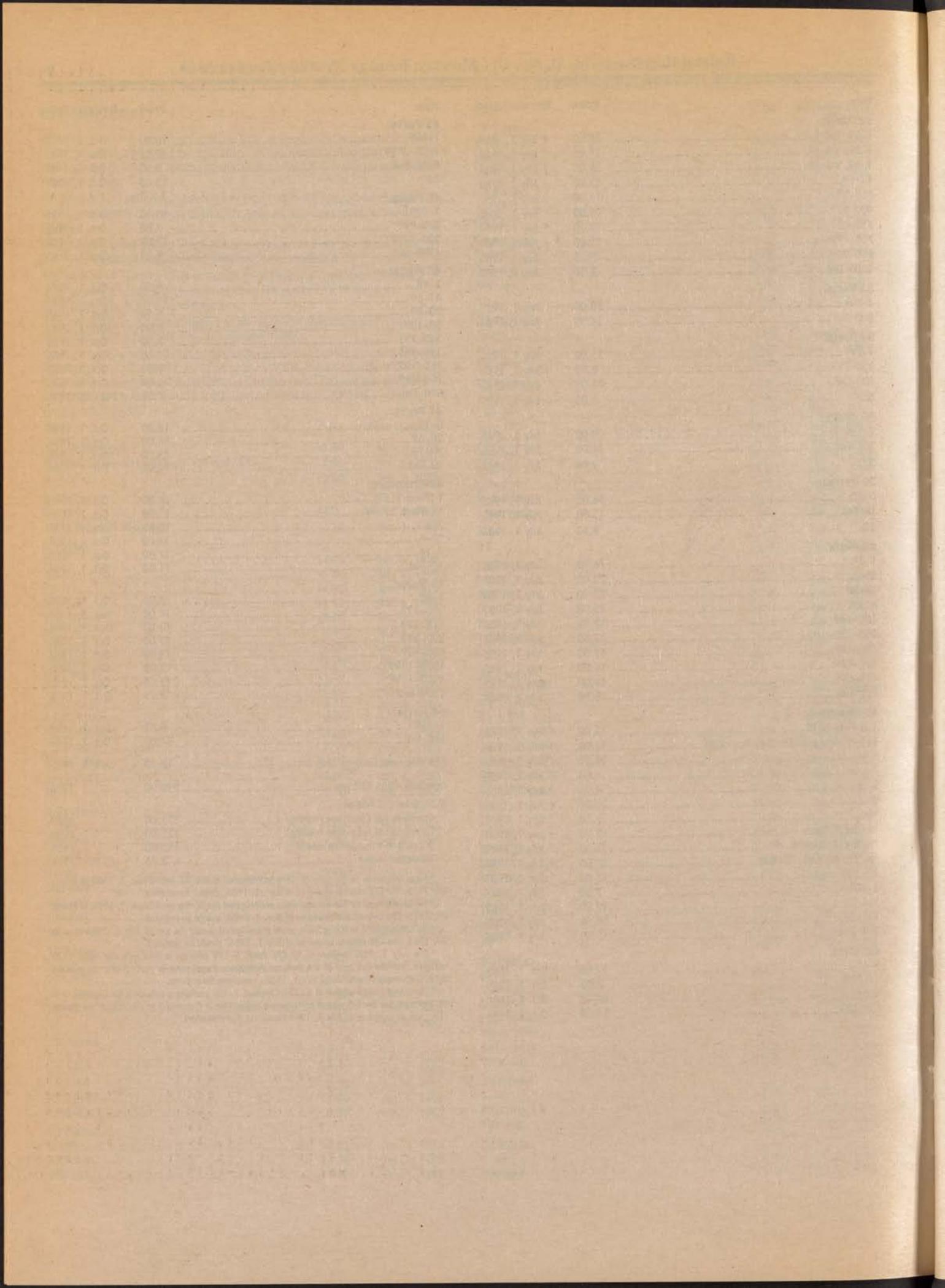
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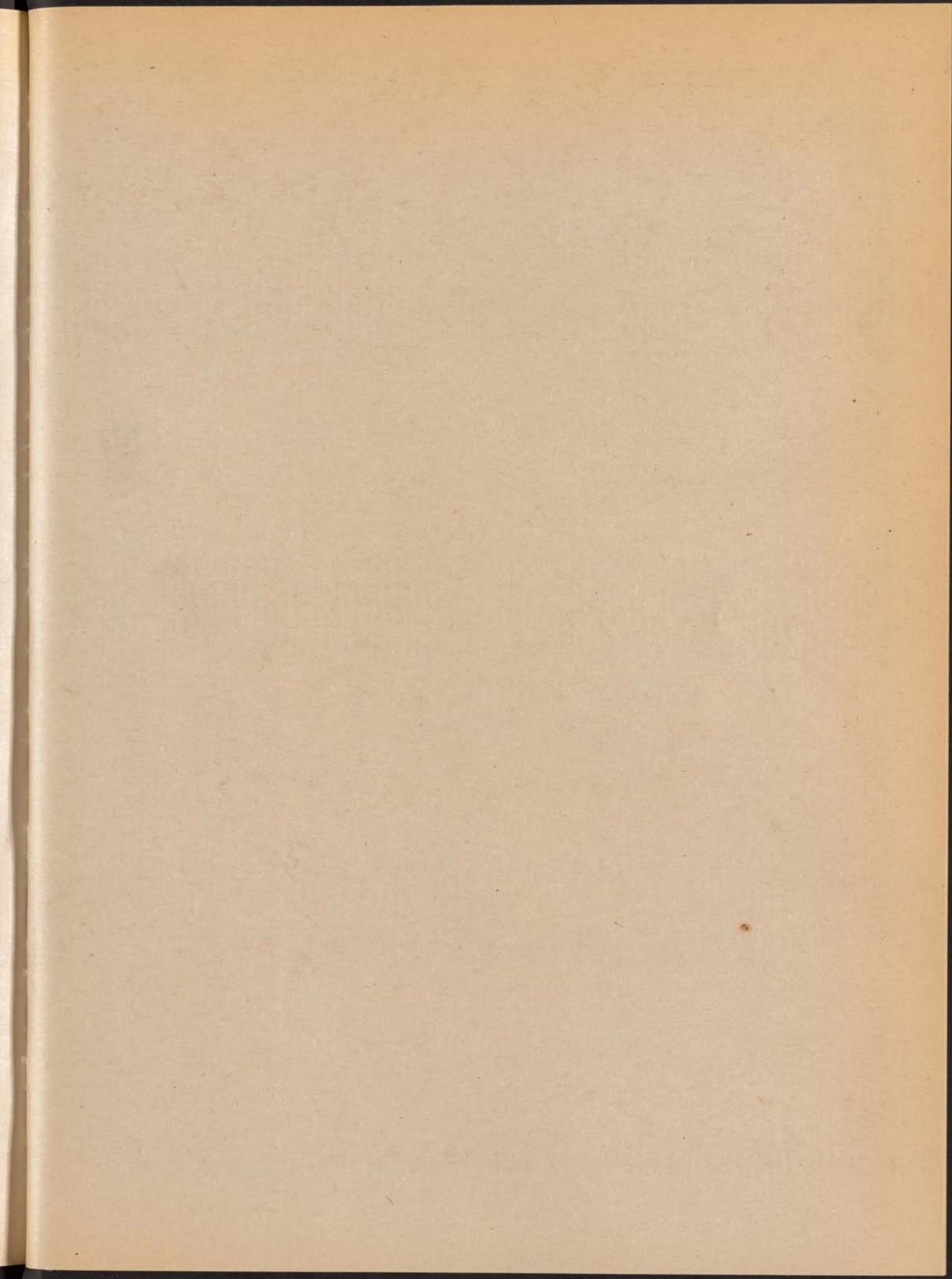
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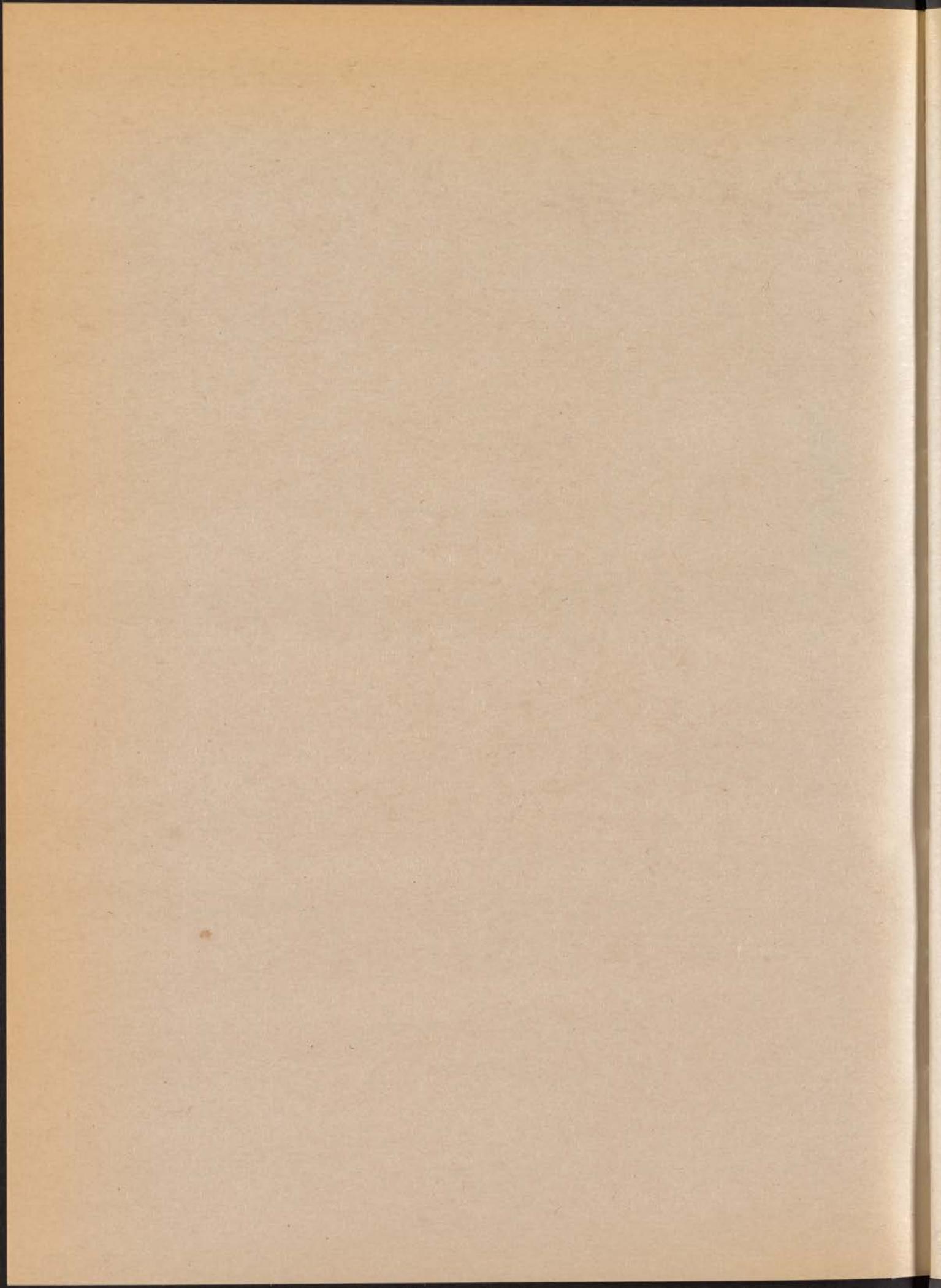
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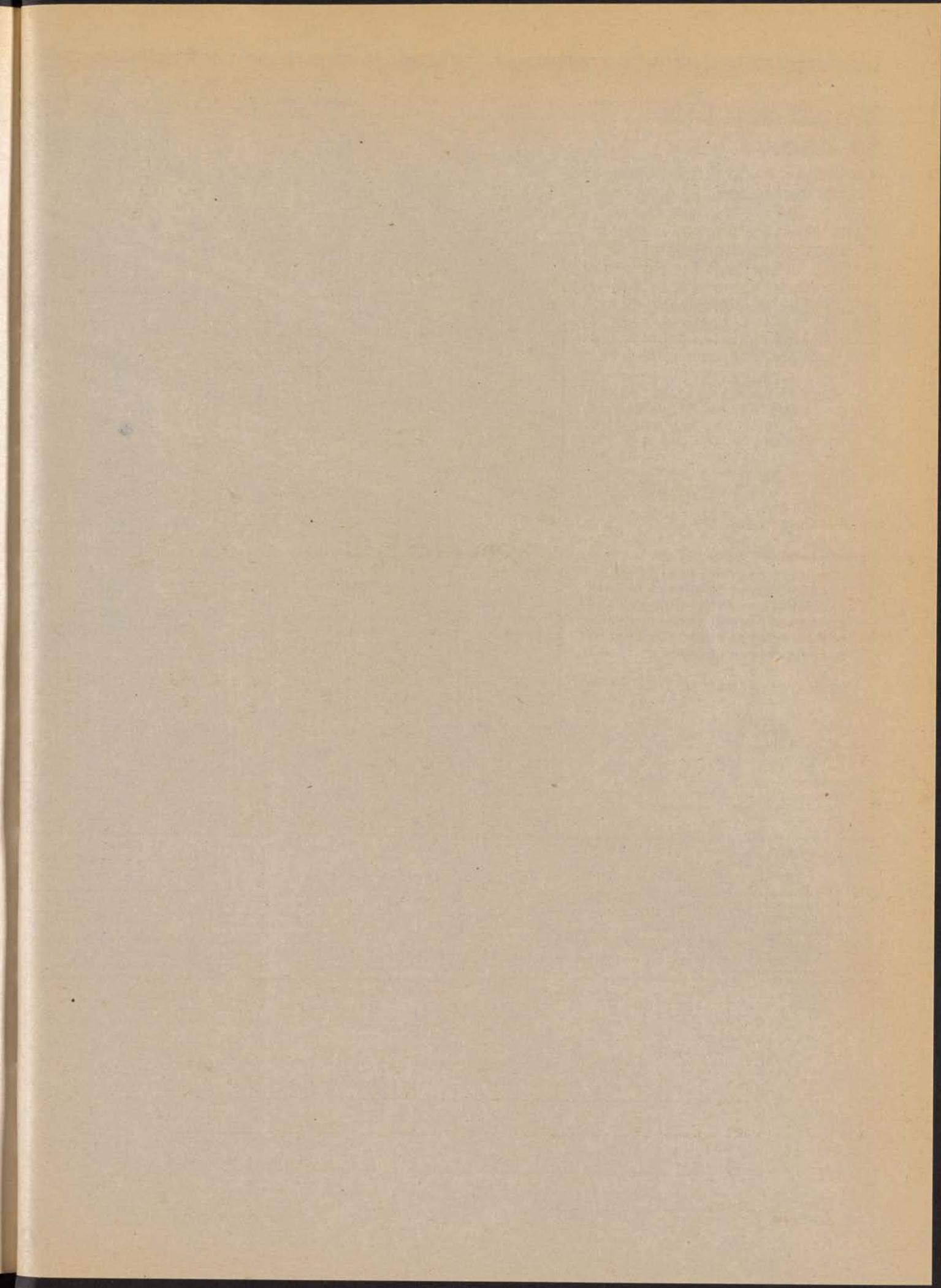
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