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Tuesday
February 3, 1987

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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

PORTLAND, OR

WHEN: February 17; at 9 am.
WHERE: Bonneville Power Administration Auditorium, 1002 N.E. Holladay Street, Portland, OR.
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WHEN: February 18; at 1:30 pm.
WHERE: Room 8544, Federal Building, 300 N. Los Angeles Street, Los Angeles, CA.
RESERVATIONS: Call the Los Angeles Federal Information Center, 213–894–3800

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WHEN: February 20; at 9 am.
WHERE: Room 2S31, Federal Building, 880 Front Street, San Diego, CA.
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement Spouse Equity Act of 1984

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (POM) is revising its interim rules implementing the Civil Service Retirement Spouse Equity Act of 1984 (CSRSEA) as amended by the Federal Employees Benefits Improvements Act of 1986 (FEBIA) and the Federal Employees' Retirement System Technical Corrections Act of 1986 (FERSTCA). These revisions are necessary (1) to conform with changes in the law made by FERSTCA; and (2) to clarify several sections in the previously published interim rules.

DATES: Interim rules effective February 3, 1987; comments must be received on or before April 6, 1987.

ADDRESS: Send written comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia A. Rochester (202) 632–4682.

SUPPLEMENTARY INFORMATION: On September 8, 1986, we published (at 51 FR 31927) interim rules (with a request for comments) implementing the retirement provisions of FEBIA (Pub. L. 99–251). The September 8, 1986, interim rules were necessary to conform earlier-published interim rules (50 FR 20064, May 13, 1985) implementing CSRSEA, with the changes made by FEBIA. These revisions to the September 8th interim rules are necessary for conformance with the technical changes made by FERSTCA (Pub. L. 99–556). Additionally, we are clarifying several sections of the September 8th interim rules.

I. Changes Required By FERSTCA

Section 831.1704 has been revised to reflect a change (provided in section 501(a) of FERSTCA) in the provisions concerning a court-ordered survivor annuity for a former spouse. Previously, FEBIA allowed a court-ordered survivor annuity to a former spouse if either (1) the court order terminates the marriage; or (2) the employee or Member retires on or after May 7, 1985. Now, under FERSTCA, a court-ordered survivor annuity for a former spouse based on a marriage that was terminated before May 7, 1985, will not be honored. We are therefore deleting the paragraphs ((d)(1)(i) and (ii)) that incorporated the superseded provisions.

II. Clarifying Regulatory Text

Section 831.612(a)(1) has been revised to clarify that when the marriage of an individual who retired on or after May 7, 1985, terminates after retirement, the individual may file with OPM a written election to provide a former spouse annuity within 2 years after the termination of the marriage. The language in § 831.612(a)(1) of the September 8th interim rules did not clearly state that the provisions apply when the individual's marriage terminates after retirement.

Section 831.1704(e) has been revised to make it clear that OPM will not honor a court order modifying a decree of divorce or annulment if it is issued after the death or retirement of the employee or Member involved. The language in the text of the September 8th interim rules could have been interpreted to mean that OPM would honor such modifications when the marriage is terminated after retirement.

Under section 553(d)(3) of Title 5, United States Code, I find that there is good reason to make these amendments effective in less than 30 days. These regulations are effective upon publication so that OPM regulations will conform with the law as recently amended. Delaying rulemaking would result in unncessary confusion regarding the conditions under which a former spouse may be entitled to retirement benefits under the law.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management
James E. Colvard,
Deputy Director.

PART 831—RETIREMENT

Accordingly, OPM is amending 5 CFR Part 831 as follows:

Subpart F—Survivor Annuities

1. The authority citation for Subpart F of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.621 also issued under sec. 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251.

2. In § 831.612, paragraph (a)(1) is revised to read as follows:

§ 831.612 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

(a)(1) Except as provided in paragraphs (b) and (c) of this section, when the marriage of a retiree who retired on or after May 7, 1985, terminates after retirement, he or she may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

* * * * *

Subpart Q—Court Orders Affecting Civil Service Retirement Benefits

3. The authority citation for Subpart Q of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

4. In § 831.1704, paragraphs (d) and (e)(1) are revised to read as follows:

§ 831.1704 Qualifying court orders.

* * * * *

(d) For purposes of affecting or awarding a former spouse annuity, a court order is not a qualifying court order whenever—

(1) The marriage was terminated before May 7, 1985; or

(2)(i) The marriage was terminated on or after May 7, 1985; and

(ii) The employee or Member retired under CSRS before May 7, 1985; and

(iii)(A) The employee or Member had elected not to provide a current spouse annuity for that spouse at the time of retirement; or,

(B) In the case of a post-retirement marriage, the annuitant had not elected to provide a survivor annuity for that spouse before May 7, 1985.

(e)(1) For purposes of affecting or awarding a former spouse survivor annuity, a court order modifying a decree of divorce or annulment, or modifying any court order or court approved property settlement incident to a decree of divorce or annulment will not be honored if it is issued after the employee or Member dies or retires.

* * * * *

[FR Doc. 87-2048 Filed 2-2-87; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 890

Federal Employees Health Benefits Program—Management of Reserve Funds

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations on the Federal Employees Health Benefits (FEHB) Program to modify the formula that triggers transfers of health plan reserve funds between OPM and certain health plan carriers. While overall FEHB reserve objections will remain unchanged, these regulations will enhance the efficacy of cash management procedures for the Employees Health Benefits Fund in the U.S. Treasury by delaying disbursements from the Fund until absolutely necessary and maximizing the return of excess funds that accumulate with health plan carriers when claims experience is better than expected.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Bonnie Rose (202) 632-4634.

SUPPLEMENTARY INFORMATION: On August 22, 1986, OPM published proposed regulations in the **Federal Register** (51 FR 30068) concerning changes in FEHB reserve management. The primary purpose of those regulations was to increase the preferred minimum balance for contingency reserve accounts held in the EHB Fund with respect to experience-rated health plans. The new contingency reserve target amounted to the equivalent of 1½ months' average outlays by such plans for claims paid plus administrative expenses and retentions, instead of 1 months' average outlays. At the same time, the regulations proposed a reduction in the maximum level of carrier-held reserve funds for each experience-rated health plan to an amount equivalent to 3½ month's average outlays by the plan, in lieu of 4 months. In the FEHB Program, carrier-held reserves have consistently been understood to include (1) funds set aside for incurred-but-unpaid claims; and (2) the "special" reserve representing the cumulative difference between plan income (subscription income plus interest on investments) and plan expenses (claims paid, claims incurred but unpaid, administrative expenses, and retentions).

The FEHB reserve target levels trigger automatic fund transfers between health plan carriers and OPM. The respective transfers normally coincide with the carrier's submission and OPM's acceptance of the plan's accounting statement at the end of each contract period. However, the proposed regulations expressly recognized that it is within OPM's discretion to specify a date subsequent to the submission of the annual accounting statement for a carrier's transfer of excess reserves, should OPM find that circumstances warrant this.

Finally, the proposed regulations sought to eliminate the special exception to the general reserve targets for plans havings more than 50 percent of their enrollees overseas. In OPM's view, this exception was no longer needed.

During the 60-day comment period, OPM received a total of six comments on the regulations from two health plan carriers, two health plan underwriters, one association representing employee organization health plans, and one health plan's legal counsel. Following is a summarization of the commenters' concerns with explanations of regulatory modifications to accommodate each concern or OPM's rationale for not considering further change.

Effective Date

Four commenters objected to supplementary information accompanying the proposed regulations which indicated that changes "would not apply to carrier-held reserves until December 31, 1986." The commenters maintained that a delay in the effective date is necessary because, when OPM published the proposed changes, the 1986 contract year was nearly over and carriers had already concluded 1987 rate negotiations with the expectation of holding total reserves equalling up to 4 months' outlays. OPM wishes to note that the revised reserve targets are intended to apply to automatic reserve transfers based on the plans' 1987 operations. Such payments will be determined on the basis of the accounting statement due at the end of the 1987 contract period, so that the actual transfers will occur in calendar year 1988. Automatic reserve transfers in calendar year 1987 will be based on 1986 plan operations which are subject to reserve target levels under OPM's final regulations published on March 4, 1986 (51 FR 7428).

Access to OPM-Held Reserves

All of the commenters opposed reapportioning FEHB reserve holdings between OPM and the plans, unless the regulations also provide automatic access to the plan's contingency reserve whenever a plan demonstrates that it is, or will likely be, in a negative cash-flow position. The commenters noted that plans must typically set aside funds approximately 3 months' average outlays to cover incurred-but-unpaid claims. Thus, the new regulations effectively reduce any year-end surplus of income for the plan over plan expenses that may be retained in the carrier-held special reserve to one-half month's outlays, instead of 1 month. The special reserve serves as the carrier's margin against adverse fluctuations in claims experience. The commenters maintained that the proposed reserve targets create a significant risk of carrier reserve depletion and delays in claims payments.

OPM does not dispute the comments that the FEHB plans are vulnerable to adverse claims experience because plans must generally submit benefit and rate proposals 7 months in advance of a particular contract year. Furthermore, applicable law requires an open season

for enrollment changes during the interim period between contract negotiation and the effective date of any change in benefits or rates. However, in addition to the end-of-year reserve transfers, the regulations (5 CFR 890.503(c)(6)) will continue to allow carriers to request a transfer from a plan's contingency reserve anytime the carrier has good cause, such as an unanticipated increase in benefit claims. If the carrier provides adequate justification for the request, OPM can respond in a matter of days. Moreover, the funds transferred under the provision are not limited to the excess in the contingency reserve over the preferred minimum balance. As a further assurance to plans, the final regulations (5 CFR 890.503(c)(6)) assign carrier requests for unscheduled contingency reserve transfers "high priority" in OPM's administration of the program.

One underwriter expressed particular concern about the proposed reduction in carrier-held reserves, noting that if a plan changes underwriters the displaced underwriter has no contractual call on the plan's contingency reserve funds beyond the contract expiration date. Health plan rate negotiations anticipate income to the plan from subscription income, interest from reserve investments, and transfers of contingency reserves in excess of the preferred minimum balance. Automatic contingency reserve transfers are based on the plan's annual accounting report due upon conclusion of each contract year. Moreover, OPM regulations specify that resulting contingency reserve transfers shall be reported as subscription income to the plan for the year in which paid. Thus, a displaced underwriter would not receive all of the income anticipated for the final contract year and might sustain a deficit for plan operations, in spite of the fact that the plan's contingency reserve exceeds the preferred minimum balance.

OPM agrees that the underwriter has put forth a valid concern. However, this matter may be addressed in the contract between an underwriter and the carrier of an experience-rated health plan. The contract may provide that any contingency reserves accessible to the plan under OPM regulations and negotiated as income for the plan for a particular contract year shall continue to be available to the underwriter when the carrier fails to renew the underwriter's contract at the end of the contract term, if such funds are necessary to satisfy outstanding underwriter liabilities attributable to plan benefits. The fact that OPM's regulations (5 CFR 890.503(c)(6)) specify that disbursements from FEHB contingency reserves shall be reported as subscription income to the plan for the year in which payment occurs is an accounting convention. This does not affect performance under a contract between a plan's carrier and an underwriter.

Exceptions From Reserve Targets

Both an association representing employee organization health plans and one of the underwriters for a large number of those plans urged OPM to provide for exceptions to the 3½-month target on year-end carrier reserves. They stated that this was necessary to ensure that no carrier is required to transfer funds to OPM that are committed to pay for incurred-but-unpaid claims. These commenters noted that there are bona fide differences in the way carriers determine and account for their incurred claims. In particular, they maintained that an exception to the formula is still a critical factor when a plan is dealing with a significant number of overseas enrollees. One employee organization plan, for example, introduced a distinct plan option in the 1986 contract year to deal exclusively with enrollees who are stationed at foreign posts of duty.

On reconsideration, OPM agrees that a special exception to the reserve formula should be retained to deal with the lag time associated with receiving and processing claims when the majority of enrollees, in either an entire plan or a particular plan option, are stationed outside the United States. Accordingly, the final regulations retain the provision under which payments to and from the contingency reserve associated with such plans, or plan options, will be based solely on maintaining the carrier's special reserve at an amount equivalent to 1 month's average outlays for claims and administration. In all other cases, though, OPM concludes that the 3½-month target for carrier-held reserves should be adequate to sustain uninterrupted operations. But, in the event that a cash-flow problem does develop, we reiterate that OPM will promptly act on requests for special contingency reserve payments.

Miscellaneous Comments

Two commenters questioned whether manipulating FEHB reserve policy to reflect the Administration's emphasis on improved cash management in the Federal budget is consistent with the statutory purposes of the FEHB Fund. We see no inconsistency. Regardless of where FEHB reserves are actually accumulated, they will continue to be available solely to benefit program participants.

Finally, one commenter objected to the proposed changes from the perspective of impact on investment returns and the attendant effect on program costs. The commenter advised that the new reserve targets will result in significant opportunity costs to the program. Plans can typically achieve a higher rate of return on investments than can the Government because the Department of the Treasury invests primarily in short-term securities. Higher investment yields ultimately translate into reduced program costs. Moreover, the new reserve targets make it more likely that plans will be forced to liquidate assets to pay benefits, creating the risk of capital losses for plans.

OPM does not find this argument persuasive. Although it is well-established FEHB Program policy that FEHB funds that are not immediately needed to pay benefits should be invested in interest-bearing obligations, generation of interest income is not a primary program objective. Rather, the FEHB law implicitly directs that funds are to be available for the benefit of program participants. Thus, short-term investments are entirely consistent with the statutory purposes of the FEHB Fund and they obviate the need to liquidate assets at a loss if unanticipated events create cash-flow problems.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they relate to OPM's management of the Employees Health Benefits Fund.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Claims, Government employees, Health insurance, Retirement.

Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of

Pub. L. 95–454, 92 Stat. 1112; § 890.301 also issued under 5 U.S.C. 8905(b); § 890.302 also issued under 5 U.S.C. 8901 (5) and (9); § 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98–615, 98 Stat. 3195, and Title II of Pub. L. 99–251, 100 Stat. 20.

2. Section 890.503 is amended by revising paragraph (c) to read as follows:

§ 890.503 Reserves.

* * * * *

(c)(1) *Contingency reserve.* The contingency reserve for each plan is credited with—

(i) The three one-hundred-and-fourths of the enrollment charge set aside for the contingency reserve from the enrollment charges for employees and annuitants enrolled for that plan;

(ii) Amounts transferred in accordance with law from other contingency reserves and the administrative reserve;

(iii) Income from investment of the reserve;

(iv) Its proportionate share of the income from investment of the administrative reserve; and

(v) Any return of reserves of the plan.

(2) *Contingency reserve minimum balance.* The preferred minimum balance for the contingency reserve for community-rated plans is 1 month's subscription charges at the average recurring monthly rate paid from the Employees Health Benefits Fund for the plan during the most recent contract period. The preferred minimum balance for the contingency reserve for experience-rated plans is 1½ times an amount equal to the sum of an average month's paid claims plus an average month's administrative expenses and retentions, as determined under paragraph (c)(3) of this section. Amounts in excess of the preferred minimum balance for a contingency reserve account may be used with respect to the plan from which the reserve derives: To defray increases in future rates; to increase plan benefits, or to reduce contributions of eligible subscribers and the Government under the program through devices such as temporary suspension of, or reduction in, required contributions or a refund of contributions to eligible subscribers and the Government.

(3) *OPM/carrier reserve transfers.* Except as provided by paragraph (c)(4) of this section, the target level for total reserves held by the carrier of an experience-rated plan is 3½ times an amount equal to the sum of an average month's paid claims plus an average month's administrative expenses and retentions. Carrier-held reserves include funds set aside for incurred-but-unpaid benefit claims and the "special" reserve representing the cumulative difference between income to the plan (subscription income plus interest on investments) and plan expenses (benefit costs plus administrative expenses and retentions). In this section, an average month's paid claims is one-sixth of the total claims paid during the last 6 months of the most recent contract period, and an average month's administrative expenses and retentions is one-twelfth of the administrative expenses and retentions for the most recent contract period.

(i) When, as of the end of a contract period, the total of all the reserves held by a carrier for an experience-rated plan is less than the target level described in the first three sentences of paragraph (c)(3) of this section, the carrier is entitled to payment from the contingency reserve. Such contingency reserve payment shall equal the lesser of: An amount equal to the difference between the target level for the plan's reserves and the total of the reserves held by the carrier for the plan, or an amount equal to the excess, if any, of the contingency reserve over the preferred minimum balance. OPM must authorize this payment promptly after accepting the accounting statement for the contract period. The carrier must credit the amount so paid to the special reserve of the plan.

(ii) When, as of the end of a contract period, the total of all reserves held by the carrier of an experience-rated plan amounts to more than the plan's target level, the carrier must return to OPM any excess over the plan's target level. The payment must be made at the same time the plan submits its annual accounting statement unless OPM specifies a later date. If the accounting statement is not filed by the time limit specified in the plan's contract with OPM or the plan fails to return the excess reserves with the accounting statement (or at a later date specified by OPM), OPM may estimate the amount of excess reserves and offset that amount from future subscription payments.

(4) *Exceptions from carrier-held reserve targets.* If more than 50 percent of the enrollees in an experience-rated plan, or a particular plan option, are stationed at posts of duty outside the United States, its possessions, and the Commonwealth of Puerto Rico, the carrier's "special" reserve for such plan or option, as described in paragraph (c)(3) of this section, rather than the total reserves held, shall be used to determine payments to and from the contingency reserve.

(i) When the special reserve held by the carrier at the end of the contract period amounts to less than the sum of 1 month's average paid claims plus 1 month's average administrative expenses and retentions, as determined under paragraph (c)(3) of this section, the carrier is entitled to payment from the contingency reserve. Such contingency reserve payment shall equal the lesser of: An amount equal to the difference between 1 month's average paid claims plus 1 month's average administrative expenses and retentions and the total of the special reserve held by the carrier for the plan or plan option, or an amount equal to the excess, if any, of the contingency reserve over the preferred minimum balance. OPM shall authorize this payment promptly after accepting the accounting report for the contract period. The carrier shall credit the amount so paid to the respective special reserve.

(ii) When the special reserve held by the carrier for the plan or plan option at the end of the contract period amounts to more than the sum of 1 month's average paid claims plus 1 month's average administrative expenses and retentions, as determined under paragraph (c)(3) of this section, the carrier shall return to OPM any excess over such amount, to be credited to the contingency reserve administered by OPM for the plan. The payment shall be made at the same time that the plan submits its annual accounting statement unless OPM specifies a later date. If the accounting statement is not filed by the time limit specified in the plan's contract with OPM or the plan fails to return the excess reserves with the accounting statement (or at a later date specified by OPM), OPM may estimate the amount of excess reserves and offset that amount from future premium payments.

(5) OPM may, by agreement with the carrier, approve community rating for a comprehensive plan. If the contingency reserve of the carrier of a community-rated plan exceeds the preferred minimum balance, as described in paragraph (c)(2) of this section, the carrier may request OPM to pay to the plan a portion of the reserve not greater than the excess of the contingency reserve over the preferred minimum balance. The carrier shall state the reason for the request. OPM will decide whether to allow the request in whole or in part and will advise the plan of its decision.

(6) *Special contingency reserve transfers.* In addition to those amounts, if any, paid under paragraphs (c)(2) through (c)(5) of this section, OPM may authorize such other payments from the

contingency reserve as in the judgment of OPM may be in the best interest of employees and annuitants enrolled in the program. A carrier for a plan may apply to OPM at any time for a payment from the contingency reserve when the carrier has good cause, such as unexpected claims experience and variations from expected community rates. In the administration of this part, OPM will accord a high priority to deciding whether to allow requests under this paragraph in whole or in part and will promptly advise the carrier of its decision. Amounts paid from the contingency reserve under paragraphs (c)(2) through (6) of this section shall be reported as subscription income in the year in which paid. By agreement with the carrier and where good cause exists, OPM may accept payment from carrier reserves for credit to the contingency reserve in an amount and under conditions other than those specified in paragraph (c) of this section.

[FR Doc. 87-2050 Filed 2-2-87; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 402, 403, 405, 409-411, 413-425, 427-433, and 435-451

[Doc. No. 3720S]

General Amendment; Various Crop Insurance Regulations; Termination for No Premium Earned

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends all regulations relating to the insurance covering specific crops or groups of crops, and codified in Chapter IV of Title 7 of the Code of Federal regulations (7 CFR Part 402, *et seq.*). The intended effect of this rule is to provide that, effective for the 1987 and succeeding crop years, contracts not earning premium shall be cancelled after three years of dormancy instead of five years. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: March 5, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the regulations cited herein under those procedures. The sunset review dates established for all regulations affected by this action remain unchanged.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

Under present policy provisions for insuring crops issued by FCIC those policies not earning premium for five consecutive years are terminated. As an example, if an insured produced corn, oats, and soybeans and has each crop insured, FCIC maintains three contracts and supporting paperwork. If the insured grows only soybeans for five consecutive crop years, FCIC would continue to maintain contracts, process zero acreage reports and attendant records on corn and oats, but no premium is paid, no liability incurred, and essentially no insurance exists.

FCIC has determined that sufficient time elapses in three years to follow a rotational plan of farming to include corn and oats in the example above, making it unnecessary to maintain such dormant contracts for five years.

When terminating a dormant contract, FCIC notifies the insured that policies for insurance on certain crops have not earned premium for the requisite number of consecutive years and, unless reinstated by the insured before the termination date, such policies will be terminated. The insured, therefore, has the option of deciding to produce the crops and maintain insurance if desired.

On October 27, 1986, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 51 FR 37916, proposing to amend all crop insurance policies issued by FCIC relating to the insurance covering specific crops or groups of crops to provide that, effective with the 1987 crop year for policies with contract change dates subsequent to February 27, 1987, and with the 1988 crop year for all other crop policies, contracts not earning premium, will be cancelled after three years of dormancy instead of the current five years.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the proposed rule is hereby adopted as a final rule.

With the issuance of this rule FCIC changes the time allowing a contract not earning premium to be dormant from five to three consecutive years.

List of Subjects in 7 CFR Parts 402, 403, 405, 409, 410, 411, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 427, 428, 429, 430, 431, 432, 433, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, and 451

Crop Insurance

This regulation concerns raisin, peach, apple, Arizona-California citrus, Florida citrus, grape, Texas citrus, Forage seeding, Forage production, pea, sugarcane, Wheat, Barley, Grain sorghum, Cotton, Potato, Flax, Rice, Peanut, Oat, Sunflower, Rye, Sugar beet, Soybean, Corn, Dry bean, Tobacco-quota, Tobacco-guaranteed, Canning & freezing sweet corn, canning and processing tomato, Almond, Texas citrus tree, Table grape, Prevented planting, Hybrid seed, Fresh tomato, Pepper, Walnut, Popcorn, ELS (pima) cotton, Fresh market sweet corn, Prune, and Canning and processing peach.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), the Federal Crop Insurance Corporation hereby amends all crop insurance

regulations issued by FCIC and currently in effect, covering specific crops or groups of crops (7 CFR Part 402, *et seq.*), effective for the 1987 and succeeding crop years for policies with contract change dates subsequent to February 27, 1987, and with the 1988 and succeeding crop years for all other crop policies, in the following instances:

1. The authority citation for 7 CFR Parts 402, 403, 405, 409, 410, 411, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 427, 428, 429, 430, 431, 432, 433, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, and 451, continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. In § 402.7(d), section 16 of the FCIC Policy is amended by revising subsection 16.f to read as follows:

§ 402.7 The application and policy.

* * * * *

(d) * * *

16. * * *

f. The contract will terminate if no premium is earned for 3 consecutive years.

* * * * *

§§ 403.7, 405.7, 409.7, 410.7, 411.7, 413.7, 414.7, 415.7, 416.7, 417.7, 418.7, 419.7, 420.7, 421.7, 422.7, 423.7, 425.7, 427.7, 428.7, 429.7, 430.7, 431.7, 432.7, 433.7, 435.7, 436.7, 437,7, 438.7, 439.7, 440.7, 441.7, 443.7, 444.7, 445.7, 446.7, 447,7, 448.7, 449.7, 450.7, and 451.7. [Amended]

3. In §§ 403.7(d), 405.7(d), 409.7(d), 410.7(d), 411.7(d), 413.7(d), 414.7(d), 415.7(d), 416.7(d), 417.7(d), 418.7(d), 419.7(d), 420.7(d), 421.7(d), 422.7(d), 423.7(d), 425.7(d), 427.7(d), 428.7(d), 429.7(d), 430.7(d), 431.7(d), 432.7(d), 433.7(d), 435.7(d), 436.7(d), 437.7(d), 438.7(d), 439.7(d), 440.7(d), 441.7(d), 443.7(d), 444.7(d), 445.7(d), 446.7(d), 447.7(d), 448.7(d), 449.7(d), 450.7(d), and 451.7(d), Section 15. of the FCIC Policy is amended by revising subsection 15.f to read as follows:

* * * * *

(d) * * *

15. * * *

f. The contract will terminate if no premium is earned for 3 consecutive years.

* * * * *

4. In § 424.7(d), section 15. of the FCIC Policy is amended by revising subsection 15.e. to read as follows:

§ 424.7 The application and policy.

* * * * *

(d) * * *

15. * * *

e. The contract will terminate if no premium is earned for 3 consecutive years.

* * * * *

5. In § 442.7(c), section 15. of the FCIC Policy is amended by revising subsection 15.f. to read as follows:

§ 442.7 The application and policy.

* * * * *

(c) * * *

15. * * *

f. The contract will terminate if no premium is earned for 3 consecutive years.

* * * * *

Done in Washington, DC, on January 5, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–2061 Filed 2–2–87; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 907

Navel Oranges Grown in Arizona and Designated Part of California; Minimum Size Regulation

AGENCY: Agriculture Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a minimum size requirement of 2.32 inches in diameter for fresh domestic shipments of California-Arizona navel oranges during the 1986–87 marketing season. This action recognizes the size composition of the 1986–87 California-Arizona navel orange crop and current and prospective market conditions.

EFFECTIVE DATE: February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/447–5697.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this regulation on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, hereinafter referred to as the "Act", and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Although handlers and/or marketers are affected by size regulations, the intent of the Act is to benefit agricultural producers. The California-Arizona navel orange industry is characterized by a large number of producers located over a wide area. The production area is divided into four districts which cover Arizona and a part of California. The highest proportion of the production is located in Central California (District 1), which represented 87 percent of the total production in 1985–86. District 2 is located in the southern coastal area of California and represented 12 percent of 1985–86 production; District 3 is the desert area of California and Arizona, which represented 1 percent last season; and District 4, northern California, less than 1 percent.

The Navel Orange Administrative Committee (NOAC) reports that there were 4,065 producers during the 1985–86 season and 123 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1 (1985)) as those having average annual gross revenues for the last three fiscal years of less than $100,000. Handlers are considered small entities if revenues are less than $3.5 million. The California-Arizona navel orange industry is characterized by small producers. The 1985–86 industry total value of production (at the on-tree level) was $190 million which would average $47,000 per producer.

The domestic (regulated) market is the preferred market for California-Arizona navel oranges. It is estimated that 67 percent of the 1986–87 crop of 72,700 cars will be utilized in fresh domestic channels (48,800 cars), with the remainder being exported fresh or processed. This compares to 47,985 cars shipped to domestic markets in 1985–86, about 71 percent of the 67,867 car crop.

This action proscribes the shipment of small sized California-Arizona navel oranges during the 1986–87 season. Navel oranges are classified into categories which indicate the number of oranges packed in a standard carton of 37.5 pounds. For instance, a size category designating very large size oranges would be 56's and very small sizes, 180's or 210's. The regulation will prohibit the shipment of size 180's and smaller. It is difficult to ascertain the exact amount of oranges that will preclude from shipment to the domestic fresh market because oranges sometimes tend to get larger as the

season progresses, if left on the tree, the picking patterns may vary. The NOAC reports that growth tests indicate that navel oranges have not been sizing as rapidly as had been expected earlier in the season, thus making it more difficult to predict actual outturn. However, even considering all of the unknowns, it is doubtful that the size precluded from shipment (180's and smaller) will represent more than 1 or 2 percent of the crop.

Implementation of this regulation will tend to force the handling of larger sized oranges, improving producers' return and aiding in strengthening the price patterns of the large sizes.

Prices for smaller sized oranges are usually discounted which may tend to reduce the overall price structure for all navels. However, prices tend to peak on sizes 72's and 88's, with markedly lower prices on smaller sizes; with prices for size 163's usually less than one-half the level of the more preferred sizes. Since this regulation applies only to domestic shipments, smaller sized navel oranges may be processed or exported. As not all of the crop will be utilized in domestic fresh markets, the result of the regulation would be to move toward an economic utilization which is expected to result in higher overall producer revenue.

The reporting and recordkeeping requirements under the navel orange marketing order are incurred by handlers. However, the handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carryout their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements are likely passed on to producers. Since volume regulations are being used, most of these reporting and recordkeeping functions would still be carried out in the absence of a size regulation. These size regulations do not require USDA inspection, thus no additional costs for such inspection are incurred.

Consequently, when weighing costs and benefits derived from the use of size regulations, it seems highly probable that the benefits of this rule will far outweigh the costs.

Based on the above, the Administrator of the Agricultural Marketing Service has determined that the issuance of this size regulation will not have a significant economic impact on a substantial number of small entities.

This rule is issued under Marketing Order No. 907, as amended, regulating the handling of navel oranges grown in Arizona and a designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674). This action was recommended by the NOAC which locally administers the marketing order.

A proposal was published in the December 16, 1986, issue of the **Federal Register** (51 FR 44992) and provided interested persons the opportunity for public comment. The comment period ended on December 29, 1986. One comment was received from Mr. Anthony R. Conte, Councillor-at-Large, City Council, City of Revere, Massachusetts. Mr. Conte opposed the proposal on the basis that it was too restrictive and limited competition.

Mr. Conte asserted that time and money would be wasted by the implementation of this rule and that producers should have the opportunity to sell and consumers should have the opportunity to buy smaller fruit for lower prices if they wished to, and that such trade could be mutually beneficial. However, sales of smaller sized fruit are often made at discounted prices which can have an adverse impact on the overall price structure for navel oranges and may result in lower returns to producers. In addition, smaller sized fruit can be diverted to export or by-product outlets. This regulation affects only navel oranges sold in fresh domestic channels and is estimated to prohibit only 1 to 2 percent of the 1986–87 navel oranges crop from being sold in such channels. It is hereby found that this action will tend to effectuate the declared policy of the Act.

It is further found that it is impracticable and contrary to the public interest to postpone the effective date until 30 days after publication in the **Federal Register** (51 U.S.C 553), because a final rule should be issued as soon as possible since shipments of 1986–87 crop navel oranges have already begun and are expected to continue through July 1987.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read as follows:

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

2. Section 907.930 is added to read as follows:

§ 907.930 Navel orange regulation 630.

During the period February 3, 1987 through July 31, 1987, no handler shall handle any navel oranges which are of a size smaller than 2.32 inches in diameter, such diameter to be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided,* That not to exceed 5 percent, by count, of the oranges in any container may measure smaller than 2.32 inches in diameter.

Dated: January 28, 1987.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87–2052 Filed 2–2–87; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1032

[Docket No. AO–313–A36]

Milk in the Southern Illinois Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the pool plant provisions of the Southern Illinois order based on industry proposals considered at a public hearing held at Bridgeton, Missouri, on December 9–11, 1986. The amended order provides that a distributing plant, which meets the pool plant standards of the Southern Illinois order and one or more other Federal orders, but which was regulated under the Southern Illinois order in the preceding month, shall continue to be regulated under such order until the plant has more than 50 percent of its sales of fluid milk products in the marketing area covered by another Federal order for three consecutive months. The action is necessary to reflect current marketing conditions and to insure orderly marketing in the area. Dairy farmers through their respective cooperative associations have approved the issuance of the amended order.

EFFECTIVE DATE: February 1, 1987.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued November 18, 1986; published November 21, 1986 (51 FR 42109).

Emergency Partial Final Decision: Issued January 20, 1987.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Southern Illinois order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Illinois marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The party prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Additional Findings

It is necessary in the public interest to make this order amending the order effective not later than February 1, 1987. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The emergency decision of the Assistant Secretary containing all amendment provisions of this order was issued January 20, 1987. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective February 1, 1987, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559)

(c) Determinations

It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by more than the necessary two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1032

Milk marketing order, Milk, Dairy products

Order Relative to Handling

It is therefore ordered. That on and after the effective date hereof, the handling of milk in the Southern Illinois marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

1. The authority citation for 7 CFR Part 1032 continues to read as follows:

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

2. In § 1032.7, paragraph (d)(2) is revised to read as follows:

§ 1032.7 Pool plant.

* * * * *

(d) * * *

(2) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which during the month there is a greater quantity of route disposition, except filled milk, in the marketing area regulated by the other order than in this marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which more than 50 percent of such plant's total route disposition is made in such other marketing area;

* * * * *

Effective date: February 1, 1987.

Signed at Washington, DC, on January 28, 1987.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 87–2053 Filed 2–2–87; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 1065 and 1079

[Docket Nos. AO–86–A44 and AO–295–A37]

Milk in the Nebraska-Western Iowa and Iowa Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Nebraska-Western Iowa and Iowa Federal milk marketing orders. As amended, the plant location adjustment provisions of the two orders conform with the new Class I differentials mandated by the Food Security Act of 1985, effective on May 1, 1986. The action is based on industry proposals considered at a public hearing held April 8–10, 1986. The changes are necessary to reflect current marketing conditions and to insure orderly marketing conditions in the Nebraska-Western Iowa and Iowa marketing areas.

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued February 25, 1986; published March 3, 1986 (51 FR 7280).

Recommended Decision: Issued August 6, 1986; published August 12, 1986 (51 FR 28819).

Extension of Time for Filing Exceptions to Recommended Decision: Issued August 27, 1986; published September 2, 1986 (51 FR 31133).

Final Decision: Issued December 5, 1986; published December 11, 1986 (51 FR 44617).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Nebraska-Western Iowa and Iowa orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Nebraska-Western Iowa and Iowa marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified, in marketing agreements upon which a hearing has been held.

(b) Determinations

It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders as hereby amended: and

(3) The issuance of this order amending each of the specified orders is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing areas.

List of Subjects in 7 CFR Parts 1065 and 1079

Milk marketing orders, Milk, Dairy products.

Order Relative To Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Nebraska-Western Iowa and Iowa marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended, and as hereby further amended, as follows:

The authority citation for 7 CFR Parts 1065 and 1079 continues to read as follows:

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

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

§ 1065.52 [Amended]

1. In § 1065.52, paragraph (b)(3) is amended by changing the number "1.5" to read "1.7."

PART 1079—MILK IN THE IOWA MARKETING AREA

§ 1079.52 [Amended]

1. In § 1079.52 paragraph (b)(3) is amended by changing the number "1.5" to read "1.7."

Effective date; April 1, 1987

Signed at Washington, DC, on January 28, 1987.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 87–2054 Filed 2–2–87; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Regulations G, T, U and X; Securities Credit Transactions, OTC Margin Stock List

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published from time to time by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective November 11, 1986, and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: February 10, 1987.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Research Assistant, Division of Banking Supervision and Regulation, (202)–452–2781, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202)–452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. A copy of the complete list incorporating these additions and deletions is available from the Federal Reserve Banks. This List supersedes the last complete List which was effective November 11, 1986. (Additions and deletions for that List were published at 51 FR 39642, October 30, 1986). The current List includes those stocks that meet the criteria specified by the Board of Governors in Regulations G, T, U and X (12 CFR Parts 207, 220, 221, and 224, respectively). They have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. It also includes, as a result of an amendment to the margin regulations (49 FR 35756, September 12, 1984), any stock designated under an SEC rule as qualified for trading in a national market system (NMS Security). The List of Marginable OTC Stocks, as it is now called, is a composite of the List of OTC Margin Stocks and all NMS securities. Additional OTC securities may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their designation. The names of these

securities are available at the Board and the Securities and Exchange Commission and will be subsequently incorporated into the Board's next quarterly List.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.7 (a) and (b), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin, requirements, Investments, National Market System (NMS Security), Reporting requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, Securities, National Market System (NMS Security), Reporting requirements.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(s) and 220.17(c) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the Board's List:

Deletions From List

Stocks Removed for Failing Continued Listing Requirements

Ault Inc.
No par common
Avalon Corp.
$7.50 par convertible preferred
Bacardi Corp.
Class A, $1.00 par common
CAM–OR, Inc.
No par common
Classified Financial Corp.
$.10 par common
Conservative Savings Bank
$.01 par common
Datapower, Inc.
No par common
Dimis, Inc.
$.01 par common
Environmental Processing, Inc.
$.01 par common
Warrants (expire 07–13–89)
Family Health Systems, Inc.
$.01 par common
Guilford Industries, Inc.
$.01 par common
Hytek International Corp.
$.05 par common
Integrated Software Systems Corp.
No par common
Itel Corp.
Class A, $100 par redeemable preferred
Martin Lawrence Limited Editions
Warrants (expire 12–18–86)
Mutual Savings Life Insurance Co.
$1.00 par common
Offshore Logistics, Inc.
No par preferred
Polycast Technology Corp.
Warrants (expire 08–01–92)
Property Investors of Colorado
$1.00 par shares of beneficial interest
Statewide Bancorp
Warrants (expire 03–31–89)
Sunshine Mining Co.
Warrants (expire 08–30–88)
Techdyne, Inc.
$.01 par common
Triton Group Ltd.
Series A, $1.00 par convertible preferred
United Oklahoma Bankshares, Inc.
$1.00 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

America First Federally Guaranteed Mortgage Fund L.P.
Units of limited partnership interest
American Furniture Co., Inc.
$1.00 par common
American List Corp.
$.01 par common
American Medcenters, Inc.
$.001 par common
American Medical Services, Inc.
$.10 par common
American Nucleonics Corp.
$03–⅓ par common
Anadite, Inc.
$.10 par common
Arizona Bancwest Corp.
$2.50 par common
ATE Enterprises, Inc.
$1.00 par common
C L Assets, Inc.
$1.00 par common
$1.00 par cumulative preferred
California Jockey Club
Paired certificates
Capital Federal Savings & Loan Association (California)
$.01 par common
Carteret Savings Bank
$.01 par common
Centerbanc Savings Association
$2.00 par common
Coast Savings & Loan Association
No par common
Columbus Mills, Inc.
$1.00 par common
Commercial Bancshares Inc. (New Jersey)
$5.00 par common
Compucom Development Corp.
$1.00 par common
Conna Corp.
No par common
Crump Companies, Inc., The
No par common
Distribuco, Inc.
$1.00 par common
Ealing Corp., The
$.10 par common
Economics Laboratory, Inc.
$1.00 par common
ERB Lumber Co.
$.01 par common
Filtertek, Inc.
Paired certificates
First Railroad & Banking Company of Georgia
$.66⅔ par common
Franklin Corp., The
$1.00 par common
Franklin Resources, Inc.
$.10 par common
Harper International, Inc.
$.10 par common
Healthamerica Corp.
Warrants (expire 04–05–89)
Heritage Entertainment, Inc.
Series A, warrants (expire 1989)
Home Federal Savings and Loan Association of Atlanta
$1.00 par common
II Morrow, Inc.
$.01 par common
Intelligent Systems Corp.
$.05 par common
Jackson National Life Insurance Co.
$1.15 par common
JWP, Inc.
$.10 par common

Kinney System, Inc.
$.01 par common
Kroy Inc.
$.50 par common
Manufactured Homes, Inc.
$.50 par common
Merchants Bancorp, Inc.
$3.00 par common
Michaels Stores, Inc.
$.10 par common
Midamerica Bancsystem, Inc.
$1.00 par common
Narragansett Capital Corp.
$1.00 par common
National Controls, Inc.
$1.00 par common
National Health Corp.
No par common
New Jersey National Corp.
$2.22–⅛ par common
Newcentury Bank Corp.
$5.00 par common
Pacwest Bancorp
$5.00 par common
Pasquale Food Co., Inc.
Class A, $1.00 par common
Class B, $1.00 par common
Pasta & Cheese Inc.
$.01 par common
Patient Medical Systems Corp.
$.001 par common
Patten Corp.
$.01 par common
Pawnee Industries, Inc.
$.01 par common
Peak Health Care, Inc.
No par common
Pennsylvania National Financial Corp.
$10.00 par common
People Express, Inc.
$.01 par common
Series A, $2.64 convertible preferred
Series B, $2.50 convertible preferred
Powertec, Inc.
No par common
Preferred Financial Corp.
$.01 par common
Prism Entertainment Corp.
$.01 par common
Qms, Inc.
$.01 par common
Raymond Engineering Inc.
$1.00 par common
Reebok International Ltd.
$.01 par common
Rhodes, Inc.
$1.00 par common
Rogers Communications, Inc.
Class B, no par common
Sandusky Plastics, Inc.
$.10 par common
Servicemaster Industries Inc.
$1.00 par common
Siltec Corp.
No par common
Southern United Life Insurance Co.
No par common
St. Joseph Bancorporation, Inc.
No par common
Steifer Tractor, Inc.
$1.00 par common
Stifel Financial Corp.
$.15 par common
Swedlow, Inc.
$1.00 par common
Syscon Corp.
$.05 par common
Systems Associates, Inc.
$.01 par common
Third National Corp.
$3.75 par common
United Bancorp of Arizona
$5.00 par common
United First Federal Savings and Loan Association
$.01 par common
Usacafes, Inc.
$.01 par common
USPCI, Inc.
$.10 par common
Webb Company, The
No par common, $3.00 stated value
Westamerica Bancorporation
No par common

Additions to the List

Aaron Brothers Art Marts, Inc.
$.01 par common
Abington Savings Bank (Massachusetts)
$.10 par common
Acceptance Insurance Holdings, Inc.
$.01 par common
Adaptec, Inc.
No par common
Advo System, Inc.
$.01 par common
Alliant Computer Systems Corp.
$.01 par common
Allwaste, Inc.
$.01 par common
Aloette Cosmetics, Inc.
No par common
American Museum of Historical Documents, Chartered, The
$.001 par common
American Network, Inc.
No par common
American Nursery Products, Inc.
$.10 par common
Amerifirst Federal Savings & Loan Association (Florida)
$.01 par common
Anac Holding Corp.
$1.00 par convertible preferred
Anchor Financing Corp.
$6.00 par common
Anthony, Michael Jewelers, Inc.
$.001 par common
Argonaut Group, Inc.
$.10 par common
Asbestec Industries, Inc.
No par common
Automated Language Processing Systems
No par common
Bank of New Hampshire Corp.
No par common, $2.50 stated value
Bank of Stamford (Connecticut)
$1.00 par common
Barry's Jewelers, Inc.
No par common
Bear Automotive Service Equipment Co.
$.01 par common
Benjamin Franklin Savings & Loan Association (Oregon)
$1.00 par common
Beverly Savings Bank (Massachusetts)
$.01 par common
BHA Group, Inc.
$.01 par common
Bildner, J. & Sons, Inc.,
$.01 par common
Boston Acoustics, Inc.
$.01 par common
Brown Transport Co., Inc.
$.10 par common
Carmike Cinemas, Inc.
Class A, $.03 par common
CB Financial Corp.
$7.50 par common
CDC Life Sciences, Inc.
No par common
Central Co-Operative Bank (Massachusetts)
$1.00 par common
Chandler Insurance Co., LTD.
$1.67 par common
Chicago Dock and Canal Trust, The
No par common
Clairson International Corp.
$.01 par common
Comcast Corp.
Special Class A, non-voting, $1.00 par common
Commercial Programming Unlimited, Inc.
Class A, $0.25 par common
Consolidated Capital Income Opportunity Trust/2
No par shares of beneficial interest
Warrants (expire 12–19–89)
Consumer Plastics Corp.
$.01 par common
Continental Medical Systems, Inc.
$.01 par common
Convex Computer Corp.
$.01 par common
Craft House Corp.
$.01 par common
Crazy Eddie, Inc.
6% convertible subordinated debentures
Crestmont Federal Savings & Loan Association (New Jersey)
$1.00 par common
Criterion Group, Inc.
Class A, $.01 par common
Datametrics Corp.
No par common
Delaware Ostego Corp.
$1.25 par common
Dial Reit, Inc.
$.01 par common
Dick Clark Productions, Inc.
$.001 par common

Dime Savings Bank of Wallingford, The (Connecticut)
$1.00 par common
Dixie Yarns, Inc.
No par common
Dryclean U.S.A., Inc.
$.01 par common
Duramed Pharmaceutical, Inc.
$.01 par common
Edgcomb Corp.
$1.50 par common
Ehrlich Bober Financial Corp.
$1.00 par common
Fairfield-Noble Corp.
$.10 par common
Fairhaven Savings Bank (Massachusetts)
$.10 par common
Family Mutual Savings Bank, The
$.01 par common
Farragut Mortgage Co., Inc.
$.01 par common
Financial Benefit Group, Inc.
Class A, $.01 par common
Class B, $.01 par common
1st American Bank for Savings (Massachusetts)
$.01 par common
First Citizens Bancshares, Inc.
Class A, $1.00 par common
Class B, $1.00 par common
First Colorado Financial Corp.
$1.00 par common
First Commerce Bancshares, Inc.
$1.00 par common
First Federal of Alabama, F.S.B.
$.01 par common
First Federal Savings & Loan of Chattanooga
$1.00 par common
First Federal Savings and Loan of Panama City
$1.00 par common
First Security Financial Corp.
$5.00 par common
Framingham Savings Bank (Massachusetts)
$.10 par common
Franklin Computer Corp.
No par common
Fred Meyer, Inc.
$.01 par common
Gaming and Technology, Inc.
$.10 par common
Gartner Group, Inc., The
$.01 par common
General Automation, Inc.
$.10 par common
General Kinetics Inc.
$.25 par common
Georgia Gulf Corp.
$.05 par common
Golden Valley Microwave Foods, Inc.
$.01 par common
Groundwater Technology, Inc.
$.01 par common
Grove Hall Savings Bank, the (Massachusetts)
$.10 par common
Hamburger Hamlets, Inc.
$1.00 par common
Harken Oil & Gas, Inc.
$1.00 par common
Harman International Industries, Inc.
$.01 par common
HDR Power Systems, Inc.
$.01 par common
Health Images, Inc.
$.01 par common
Heartland Express, Inc.
$.10 par common
Heritage Financial Services, Inc.
$1.25 par common
Heritage-Nis Bank for Savings (Massachusetts)
$.10 par common
Hibernia Savings Bank, The (Massachusetts)
$1.00 par common
Home Owners Federal Savings and Loan Association
$6.125 par convertible preferred
Home Savings Bank, The (New York)
$1.00 par common
Home Unity Savings & Loan Association (Pennsylvania)
$1.00 par common
Horizon Financial Services, Inc.
$1.00 par common
Huffman-Koos, Inc.
$.01 par common
Ideal School Supply Corp.
$.01 par common
Inspeech, Inc.
$.01 par common
Intertan, Inc.
$1.00 par common
Irwin Magnetic Systems, Inc.
$.001 par common
Jefferson Bancorp, Inc.
$1.00 par common
Johnstown Savings Bank (Pennsylvania)
$1.00 par common
Jones Medical Industries, Inc.
$.04 par common
Knutson Mortgage Corp.
$.01 par common
Koss Corporation
$.01 par common
Landmark Financial Corp.
$3.00 par common
Lane Financial Inc.
$1.00 par common
Lowrance Electronics, Inc
$.10 par common
Loyola Capital Corp. (Maryland)
$.10 par common
LPL Investment Group, Inc.
$.02 par common
Macrochem Corp.
$.005 par common
Manatron, Inc.
No par common
Marble Financial Corp.
$1.00 par common
Masco Industries, Inc.
Depository convertible exchangeable preferred shares
Massbank for Savings (Massachusetts)
$1.00 par common
Merchants Group, Inc.
$.01 par common
Metro Mobiles Cts, Inc.
$.10 par common
Metrobank, N.A. (California)
$1.66 par common
Mid Maine Savings Bank, F.S.B.
$.01 par common
Mid-South Insurance Co.
$1.00 par common
Milwaukee Insurance Group, Inc.
$.01 par common
Morino Associates, Inc.
$.01 par common
Mountaineer Bankshares of West Virginia, Inc.
$2.50 par common
Mtech Corp.
$.01 par common
Municipal Development Corp.
$.01 par common
Musto Exploration Limited
No par common
National Banc of Commerce Co.
$1.25 par common
National Video, Inc.
$.001 par common
Navigators Group, Inc.
$.10 par common
Neeco, Inc.
$.01 par common
Newman Federal Savings and Loan Association (Georgia)
$1.00 par common
North American Holding Corp.
Class A, non-voting, $.0001 par common
North American Ventures, Inc.
$.001 par common
Norwich Savings Society, The (Connecticut)
$1.00 par common
Nutmeg Industries, Inc.
$.01 par common
One Valley Bancorp of West Virginia, Inc.
$10.00 par common
Overmyer Corp.
No par common
Oxford Energy Co., The
$.01 per common
P.A.M. Transportation Services, Inc.
$.01 par common
PCS, Inc.
$.01 par common
Peoples Heritage Savings Bank (Maine)
$1.00 par common
Peoples Savings Bank (Connecticut)
$.10 par common
Peoples Savings Bank of New Britain, The (Connecticut)
$1.00 par common
Pharmakinetic Laboratories, Inc.
$.001 par common
Warrants (expire 10-28-87)
Pioneer American Holding Corp.

$10.00 par common
Plasti-Line, Inc.
$.001 per common
Plymouth Five Cent Savings Bank (Massachusetts)
$.10 par common
Polymeric Resources Corp.
No par common
Precision Resources, Inc.
$.10 par common
Pulitzer Publishing Co.
$.01 par common
Quicksilver, Inc.
$.01 par common
Reed Jewelers, Inc.
$.10 par common
Resdel Industries
$.50 par common
Sage Software, Inc.
$.01 par common
Scor U.S. Corp.
$.30 par common
Scott & Stringfellow Financial, Inc.
$.10 par common
Seaboard Savings & Loan Association (Virginia)
$5.00 par common
Seagull Energy Corp.
$1.00 par convertible preferred
Security Federal Savings Bank (Montana)
$1.00 par common
Seneca Foods Corp.
$.25 par common
Shaw's Supermarkets, Inc.
$1.00 par common
Shelby Federal Savings Bank (Indiana)
$1.00 par common
Shelton Savings & Loan Association (Connecticut)
$1.00 par common
Shorewood Packaging Corp.
$.01 par common
Sigma Designs, Inc.
No par common
Silicon Graphics, Inc.
$.001 par common
Somerset Savings Bank (Massachusetts)
$1.00 par common
Sound Advice, Inc.
$.01 par common
Southern Bankshares, Inc.
$2.50 par common
Springboard Software, Inc.
$.01 par common
Starpointe Savings Bank (New Jersey)
$2.00 par common
Stars To Go, Inc.
$.01 par common
Step-Saver Data Systems, Inc.
No par common
Warrants (expire 08–12–89)
Strategic Planning Associates, Inc.
Class B, no par common
Student Loan Marketing Association
Warrants (expire 08–01–91)
Suburban Bankshares, Inc.
Class A, $.10 par common
Suncoast Savings and Loan Association (Florida)
Class A, $3.55 par common
Sunlite, Inc.
$.20 par common
T Cell Sciences, Inc.
$.001 par common
Talman Home Federal Savings and Loan Association of Illinois, The
$.01 par common
Tekelec
No par common
Thermal Industries, Inc.
$.01 par common
Tolland Bank, F.S.B.
$1.00 par common
Trans Leasing International, Inc.
$.01 par common
TRC Companies, Inc.
$.10 par common
Tri-Star Pictures, Inc.
Warrants (expire 12–31–93)
Trust America Service Corp.
$.01 par common
U.S. Facilities Corp.
$.01 par common
Uni-Marts, Inc.
Class A, $.10 par common
Unicare Financial Corp.
No par common
Unifast Industries, Inc.
$.01 par common
United Savings Association (Florida)
Class A, $.01 par common
United Savings Bank (Montana)
$1.00 par common
United Savings Bank (Oregon)
$1.00 par common
University Bank and Trust Co.
$.30 par common
Vestar, Inc
$.01 par common
Victoria Creations, Inc.
No par common
Vitronics Corp.
$.01 par common
Warren Five Cents Savings Bank (Massachusetts)
$.10 par common
Webster Financial Corp.
$.01 par common
Wendt-Bristol Co., The
$.01 par common
Warrants (expire 10–16–91)
West Mass Bankshares, Inc.
$.10 par common
Westerbeke Corp.
$.01 par common
Westmark International, Inc.
$.01 par common
Wilmington Savings Fund Society, F.S.B.
$.01 par common
Worlco Data Systems
$.10 par common
Xplor Corp.
$.01 par common
ZZZZ Best Co., Inc.
$.01 par common

By order of the Board of Governors of the Federal Reserve System acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), January 27, 1987.

William W. Wiles,
Secretary of the Board.

[FR Doc. 87–1921 Filed 2–2–87; 8:45 am]
BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 8824]

Glendinning Companies, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified a 1976 consent order with respondent (41 FR 53653) by lifting a prohibition against running skill contests that are not based on "matters of established provable fact." Provisions in the original consent order that required skill contests to be based on reference materials that are available in the typical public library and disclosure of the reference books containing the answers were replaced in the modified order with new provisions requiring that correct answers be ascertainable from "authoritative reference works" and that contestants be informed of that fact.

DATES: Consent Order issued October 26, 1976. Modified Order issued January 13, 1987.

FOR FURTHER INFORMATION CONTACT: FTC/A–4631, Jerry R. McDonald, Washington, DC 20580. (202) 326–2971.

SUPPLEMENTARY INFORMATION: In the Matter of Glendinning Companies, Inc., a corporation. The prohibited trade practices and/or corrective actions, as set forth as 41 FR 53653 remain unchanged.

List of Subjects in 16 CFR Part 13

Promotional contests, Trade practices.

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

Order Reopening the Proceeding and Modifying Cease and Desist Order

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

In the matter of Glendinning Companies, Inc., a corporation, Docket No. 8824.

On September 15, 1986, Glendinning Associates, Inc. (Petitioner), successor to the respondent under the order, Glendinning Companies, Inc., filed a request to reopen and modify the Consent Order issued by the Commission on October 26, 1976, in Docket No. 8824. (88 F.T.C. 656.)

The request to reopen and modify the Consent Order was placed on the public record on October 9, 1986, and a press release concerning the petition was issued on the same date. A notice of 30 day period for public comments on the petition was published in the **Federal Register** on October 24, 1986 [5 FR 37741 (1986)]. The public comment period ended on November 10, 1986, and no comments were filed. The deadline for the Commission to rule on Petitioner's request was January 13, 1987.

Petitioner is engaged in the manufacture, promotion, sale, and distribution of promotional games used to induce the sale of consumer products. Paragraph 1 of the order relates to all promotional games, contests and sweepstakes in which a prize is offered. Paragraph 2 relates only to skill contests. Petitioner asserts that the public interest requires that the Commission replace paragraph 2 with a new paragraph 2.

Paragraph 2 now orders Petitioner to cease and desist from:

2. Engaging in promoting the use of, or participating in the development or operation of any skill contest, unless:

a. The skill contest is based solely on matters of established, provable fact.

b. The factual subject matter is obtainable from readily available reference materials, e.g., those available in the typical public library.

c. Contest materials and advertising disclose clearly and conspicuously that a substantial degree of skill is involved and also the specific reference works on which the answers are based (e.g., a specific dictionary, encyclopedia, atlas, or historical work), and contest rules and directions clearly provide all necessary information for the contestant to participate successfully.

d. Questions and answers with complete supporting data as outlined in paragraphs (a) and (b) and complete judging procedures are filed with an independent organization prior to promotion implementation.

e. The correct answers and a list of winners is made available to participants upon request and filed with an independent organization within 60 days of the close of judging of the competition.

f. Respondent or its designee maintains for at least two years after the closing of each skill contest and the awarding of all prizes in connection therewith, in addition to the records required by paragraph 1(c), all entry forms submitted by participants in such skill contests.

Petitioner argues that the unintended effect of the order is to preclude it from conducting any skill contest except those based on "established provable fact." Therefore, Petitioner contends that it is forbidden by the order from conducting other skill contests such as those involving "checker problems, chess problems, crossword puzzles, photography or drawing contests, poetry contests and contests awarding prizes for the best jingle, slogan, product name, letter, or essay."

Petitioner argues further that subparagraph b. of paragraph 2 prevents it from conducting a current events or contemporary history quize dealing with recent events because the answers to such quizzes may not be readily available in published reference materials in the typical public library. A trivia quiz may also be questionable, according to Petitioner, because the typical public library "may not have reference materials concerning sports data, motion picture lore, or data on operas, broadway shows, radio and television shows, their starts and plots."

Petitioner asserts that the requirement in subparagraph c. of paragraph 2 that contest materials and advertising disclose the specific dictionary, encyclopedia, atlas or historical work)," reduces a skill contest to a research project. Under such conditions, Petitioner argues, almost every contestant could become a winner by looking up the answers in the reference books. Therefore, according to Petitioner, large prizes could not be offered and there would be no incentive to participate if nominal prizes were offered.

Petitioner's proposed paragraph 2 restructures order paragraph 2 so that the requirements that apply to all skill contests are set forth in new subparagraphs (a) and (b) and those requirements that apply only to skill contests based on fact are listed separately under new subparagraph (c). The Commission considers this modification to be in the public interest because it would permit Petitioner to conduct games of skill that are not based on fact, while preserving the essential requirements of the order. For games of skill based on fact, the modification would eliminate the requirement in subparagraph b. that the factual subject matter be "obtainable from readily available reference materials, e.g., those available in the typical public library." This modification, is in the view of the Commission, in the public interest as it would permit Petitioner to conduct skill contests based on recent events and trivia quizzes that may not be found in reference materials that are readily available in the typical public library. Furthermore, not all answers to a contest need come from a single reference source. However, the answers must be ascertainable from "authoritative reference works."

Petitioner's proposed paragraph 2 would also eliminate the requirement in subparagraph c. that the specific reference works where answers may be found be disclosed. This modification serves the public interest as it would enable Petitioner to stimulate interest in its contests by offering large prizes. As Petitioner points out in its petition, anyone could win under the order by merely going to the stated reference books and looking up the answers. Therefore, large prizes could not be offered.

Petitioner has not demonstrated a change of law or fact to support its request that the order be reopened and modified as requested, in accordance with section 5(b) of the Federal Trade Commission Act. However, the facts presented by Petitioner have persuaded the Commission that the public interest requires that the order be reopened and modified as requested.

It Is Therfore Ordered that the proceeding is hereby reopened and the Decision and Order issued on October 26, 1976, and modified on February 24, 1981, is hereby further modified to read as follows:

Order

It is ordered, That respondent Glendinning Companies, Inc., a corporation, its successors and assigns, officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of Coca-Cola, Tab, or any food or other product, or in connection with the sale or distribution of "Big Name Bingo," or any other promotional game, contest, sweepstake or similar device which involves or offers the awarding of a prize or anything of value to participants therein, by any means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Engaging in, promoting the use of, or participating in any such promotional game, contest, sweepstake or similar device, by means of any announcement, notice or advertisement, unless:

(a) All of the requirements, terms and conditions for participating therein and for entitlement of such prizes are clearly and conspicuously set forth in each advertisement or notice which purports to explain or illustrate the operation of, manner of participation in, or the basis for or prospects of becoming entitled to or receiving a prize in connection with, any such contest or promotional game.

(b) All such prizes are in fact awarded to all participants therein whose entries conform to the stated requirements, terms and conditions for entitlement to and receipt of such prizes.

(c) There are maintained by respondent or its designee for a period of at least two years after the closing of each such promotional game or contest and the awarding of all prizes in such connection therewith, full and adequate records which clearly disclose the operation of such promotional game or contest, the basis or method used to determine entitlement to prizes, and the facts as to the receipt of such prizes by participants entitled thereto; which said records and documents shall be open for inspection during normal business hours by each contest participant or his duly authorized representative.

2. Engaging in promoting the use of, or participating in the development or operation of any skill contest, unless:

(a) Contest materials and advertising disclose clearly and conspicuously that a substantial degree of skill is involved and, contest rules and directions clearly provide all necessary information for the contestant to participate successfully.

(b) Respondent or its designee maintains for at least two years after the closing of each skill contest and the awarding of all prizes in connection therewith, in addition to the records required by paragraph 1(c), all entry forms submitted by participants in such skill contests.

(c) In any skill contest based on fact: (1) Each correct answer or solution is ascertainable from authoritative reference works; (2) the contest materials and advertising disclose, clearly and conspicuously in addition to the disclosures required by paragraph 2(a), that the answers are ascertainable from authoritative reference works; (3) questions and answers with complete supporting data and complete judging procedures are filed with an independent organization prior to promotion implementation; and (4) the correct answers and a list of winners is made available to participants upon request and filed with an independent organization within 60 days of the closing of judging of the competition.

For purposes of this order a skill contest is defined as any promotional contest or device in which the award of a prize or anything of value to the participants is determined on the basis of the winning answers or solutions submitted by participants through the exercise of a substantial degree of skill in determining the winning answers or solutions to the questions or problems which are the subject of the contest or device.

In the event that the Commission promulgates a final trade regulation rule concerned with skill contests, then such trade regulation rule shall completely supersede and replace paragraph 2 and such trade regulation rule shall become part of this order.

It is further ordered, That the terms of this order shall not apply to a promotional game, contest or device conducted by or under the direction of a governmental instrumentality, or where the respondent neither knew nor had reason to know of failure to comply with the terms of this order.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

By the Commission.

Issued: January 13, 1987.

Emily H. Rock,

Secretary.

[FR Doc. 87-2115 Filed 2-2-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81-19]

Publication of Project Cost Limits Under Blanket Certificates

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(t), the Director of the Office of Pipeline and Producer Regulation computes and publishes the project cost and annual limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) for each calendar year.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Director, OPPR (202) 357-8500.

Order of the Director, OPPR

Issued January 28, 1987.

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GNP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to § 375.307(t) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Pipeline and Producer Regulation. The cost limits for calendar years 1982 through 1987, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

List of Subjects in 18 CFR Part 157

Natural gas.

Raymond A. Beirne,

Deputy Director, Office of Pipeline and Producer Regulation.

TABLE I

Year	Limit	
	Auto. proj. cost limit (col. 1)	Prior notice proj. cost limit (col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000

TABLE II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000

[FR Doc. 87-2106 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 85C-0377]

Listing of Color Additives for Coloring Contact Lenses; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule on listing color additives for coloring contact lenses that was published in the **Federal Register** on October 28, 1986. The Roman numeral headings under Supplementary Information were incorrectly numbered. Additionally, the expanded environmental assessment provision was inadvertently cited as the abbreviated provision under **"SUPPLEMENTARY INFORMATION: VI. Environmental Assessment"**. By amending the provision, FDA will cite the correct environmental assessment regulation under which the final rule was reviewed, and correct the numbering of the Roman numeral headings.

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

SUPPLEMENTARY INFORMATION: In FR Doc. 86-24273, appearing at page 39370 in the **Federal Register** of Tuesday, October 28, 1986, the following corrections are made:.

1. The paragraph under **"VI. Environmental Assessment"** is corrected to read as follows:

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

2. On page 39371, second column, the heading, **"V. Inspection of Documents"** is corrected to read **"IV. Inspection of Documents"**; **"VI. Environmental Assessment"** is corrected to read **"V. Environmental Assessment"**; and **"VII. Objections"** is corrected to read **"VI. Objections"**.

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2026 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of FD&C Yellow No. 6, D&C Red Nos. 8 and 9; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red Nos. 8 and 9 for use as color additives in drugs and cosmetics, and for the provisional listing of FD&C Yellow No. 6 for use as a color additive in food, drugs, and cosmetics. The new closing date will be April 6, 1987. FDA has decided that this postponement is necessary to provide time for the receipt and evaluation of any objections submitted in response to the final rule, published in the **Federal Register** of December 5, 1986 (51 FR 43877), permanently listing the drug and cosmetic uses of D&C Red Nos. 8 and 9, and the final rule published in the **Federal Register** of November 19, 1986 (51 FR 41765), permanently listing the food, drug, and cosmetic uses of FD&C Yellow No. 6.

EFFECTIVE DATE: February 3, 1987, the new closing date for FD&C Yellow No. 6, D&C Red Nos. 8 and 9 will be April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald L. McCowin, 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: FDA established the current closing date of February 3, 1987, for the provisional listing of FD&C Yellow No. 6, D&C Red Nos. 8 and 9 by regulation published in the **Federal Register** of December 5, 1986 (51 FR 43899). Also in the **Federal Register** of December 5, 1986 (51 FR 43877), FDA permanently listed the drug and cosmetic uses of D&C Red Nos. 8 and 9. A final rule permanently listing the food, drug, and cosmetic uses of FD&C Yellow No. 6 was published in the **Federal Register** of November 19, 1986 (51 FR 41765). FDA has received numerous comments objecting to the permanent listing of D&C Red Nos. 8 and 9, and FD&C Yellow No. 6.

FDA believes that it is reasonable to postpone the closing date for these color additives until April 6, 1987, to provide time for evaluation of these comments. FDA concludes that this extension is consistent with the public health and the standards set forth for continuation of provisional listing in *McIlwain* v. *Hayes*, 690 F.2d 1041 (D.C. Cir. 1982).

Because of the shortness of time until the February 3, 1987, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of April 6, 1987. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553 (b) and (d) (1) and (3), this postponement is issued as a final regulation, effective on February 3, 1987.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* by revising the closing dates for "FD&C Yellow No. 6" in paragraph (a) and for "D&C Red No. 8" and "D&C Red No. 9" in paragraph (b) to read "April 6, 1987."

§ 81.27 [Amended]

3. In § 81.27 *Conditions of provisional listing* by revising the closing dates for "FD&C Yellow No. 6," "D&C Red No. 8," and "D&C Red No. 9" in paragraph (d) to read "April 6, 1987."

Dated: January 27, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-1899 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-86-09]

Drawbridge Operation Regulations; Bayou Teche, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana State University (LSU) Agricultural Experiment Center, the Coast Guard is changing the regulation governing the operation of the swing span bridge across Bayou Teche, mile 46.5 near Jeanerette, Iberia Parish, Louisiana. This change will require the draw of the bridge to open on at least four hours advance notice from 7 a.m. to 5 p.m., Monday through Friday, to be consistent with the existing opening requirement for the bridge immediately upstream at mile 43.5 and the bridge downstream at mile 48.7. The bridge at mile 46.5 is maintained in the open position at all other times.

This change is being made because of infrequent requests to open the draw. This action will relieve the bridge owner of the burden of having a person constantly available at the bridge on weekdays from 7 a.m. to 5 p.m., while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on March 5, 1987.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On 6 November 1986, the Coast Guard published a proposed rule (51 FR 40342) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 14 November 1986. In each notice interested persons were given until 22 December 1986 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

The only response to the notices was one letter of no objection.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this amended regulation has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this finding is that few vessels pass through the bridge as evidenced by the 1984 bridge opening statistics. These vessels can reasonably give four hours notice for a bridge opening by placing a collect call to the bridge owner at any time from ashore or afloat. Mariners requiring the bridge opening are mainly repeat users of the waterway and scheduling their arrival at the bridge at the appointed time involve little or no additional expense to them. The four hours advance notice of opening the draw would be given by placing a collect call to the LSU Agricultural Experiment Center between the hours of 7:30 a.m. and 4:30 p.m., telephone (318) 276-5527; at all other times call (318) 276-9422 or 6337. From afloat, this contact may be made by radiotelephone through a public coast station. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citiation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.501 is amended by redesignating existing paragraphs (b)(8) through (b)(18) as (b)(9) through (b)(19), and by adding a new paragraph (b)(8) to read as follows:

§ 117.501 Teche Bayou.

* * * * *

(b) * * *

(8) LSU Agri bridge, mile 46.5 near Jeanerette (notice required for opening from 7 a.m. to 5 p.m., Monday through Friday except holidays).

* * * * *

Dated: January 15, 1987.

E.B. Acklin,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 87-2065 Filed 2-2-87; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 10

International Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes numerous miscellaneous revisions consolidated in the transmittal letter for issue 4 of the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1.

While many of the revisions are minor, editorial, or clarifying, issue 4 contains some substantive changes, such as the regulations governing the new International Priority Airmail Service, certain new International Surface Air Lift Service exchange offices and destination countries, and the addition of new countries receiving Express Mail International Service. These substantive changes have previously been published in the **Federal Register.**

EFFECTIVE DATE: September 18, 1986.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp (202) 268-2960.

SUPPLEMENTARY INFORMATION: The International Mail Manual (IMM), which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 10.1), has been amended by the publication of a transmittal letter for issue 4, dated September 18, 1986. The text of all published changes is filed with the Director of the Federal Register. Subscriber to the International Mail Manual receive these amendments automatically from the Government Printing Office.

The following is from the Explanation section of the transmittal letter for issue 4:

Explanation

Issue 4 replaces Issue 3 of the IMM. It contains all IMM revisions published in the *Postal Bulletin* through September 18, 1986 and the **Federal Register** of September 3, 1986. Items published after September 18, 1986 are effective but have not been incorporated into Issue 4. In addition, Issue 4

corrects printing and format errors and omissions in Issue 3.

Chapter 1

a. Section 115.11 is revised to reflect changes in the office title and functions caused by the headquarters and field realignment which became effective June 7, 1986.

b. Section 122.1j is revised to insert a second address example for mail addressed to Mexico.

c. Section 123.13 is revised to reflect a new value of $312 when Form 2976A, *Customs Declaration* is required. Previously the amount was set at $120. (PB 21543, 12–5–85).

d. Section 138f is revised to incorporate the requirements for a special endorsement on shipments containing radioactive materials. (PB 21543, 12–5–85).

e. Section 143.5g is revised to permit envelopes with one or two transparent window panels. (PB 21543, 12–5–85).

f. Section 153a is revised to permit a postage meter stamp or permit imprint to be affixed directly on the mail piece when plastic wrap is used. (PB 21543, 12–5–85).

g. Section 123.22, 131.3, 139.41b, 142.2, 144.2b, 144.3, 144.4 are revised to correct printing and/or format errors and omissions in Issue 3.

h. Section 137.2b is revised to reflect the new office title, Office of Classification and Rates Administration.

i. Section 142.2 is revised to correct printing error on the maximum thickness of post cards.

Chapter 2

a. Section 211.5 is revised to include Greece and Qatar in the list of countries providing return receipt service. (PB 21563, 4–24–86)

b. Section 241.22a(3) is revised to correct the DMM reference.

c. Section 251 is revised to insert item d which permits the mailing of sound recordings or tapes as Free Matter for the Blind provided they are sent by a blind person. (PB 21543, 12–5–85).

d. Section 263.1 is revised to reflect the current Small Packet weight limit of four pounds to many countries. (PB 21543, 12–5–85).

e. Section 231.32 is revised to reflect the new office title, Office of Classification and Rates Administration.

f. Sections 244.2 and 244.5 are revised to incorporate new Second-Class marking provisions. (PB 21579, 8–14–86)

g. Sections 224.3, 241.5b, 244.5, 244.54, 245, 271.21, 274.2 are revised to correct printing and/or format errors and omissions in Issue 3.

h. Section 280 is a new subchapter to incorporate regulations governing International Priority Airmail Service. Effective date of the new service is October 3, 1986. (Federal Register Notice of September 3, 1986)

Chapter 3

a. Sections 391.2, 391.2c, 391.413, 391.423, 391.431, 391.5c, 391.72d are revised to incorporate new procedures for the acceptance and exchange of international money orders to Japan (PB 21523, 7–18–85).

b. Section 392.3a is revised to reflect the new price of 80 cents for International Reply Coupons. (PB 21543, 12–5–1985).

c. Sections 323.22, and 391.5 are revised to correct printing and/or format errors and omissions in Issue 3.

d. Section 333.2 is revised to reflect new registered indemnity limit for Canada (PB 21560, 4–3–86).

e. Section 364.22b and Exhibit 363.1 are revised to reflect the new office title, Office of Classification and Rates Administration.

f. Sections 391.432(c)(3), 391.6, 391.71, 391.72, 391.8, 391.911, 391.92 are revised to reflect the correct address for the Money Order Division (PB 21576, 7–24–86).

Chapter 4

a. Section 423.2 is revised to incorporate new procedures for handling shortpaid Express Mail International Service items. (PB 21531, 9–12–85).

Chapter 7

a. Section 711.62 is revised to correct the entry pertaining to Hawaii.

b. Section 782.14 is revised to reflect new procedures for returning undeliverable air letters and cards (PB 21543, 12–5–85).

c. Section 782.31 is revised to clarify the procedure for returning undeliverable mail.

d. Section 711.511 is revised to correct a format error.

e. Sections 741, 756.2, 793.1, 794.2 and 795 are revised to reflect the new office title, Office of Classification and Rates Administration.

Chapter 9

a. Section 928.121 is revised to incorporate new procedures for processing requests for completion of return receipts. (PB 21543, 12–5–85).

b. Section 934.22 is revised to reflect new registered indemnity limit for Canada (PB 21560, 4–3–86).

c. Sections 922.3, 931.22, and 944.2 are revised to reflect the new office title, Office of Classification and Rates Administration.

Appendices

Appendix C is revised to extend the conversion table out to $500 U.S.

Appendix D is revised to reflect:

a. New service countries

Bahamas (PB 21536, 10–17–85)
Cyprus (PB 21549, 1–16–86)
Greece (PB 21536, 10–17–85)
Guyana (PB 21573, 7–3–86)
Iceland (PB 21542, 11–28–85)
Nigeria (PB 21573, 7–3–86)
Oman (PB 21573, 7–3–86)
Panama (PB 21527, 8–15–85)

b. Changes in weight limits, service areas, and admitted contents:

Argentina (PB 21561, 4–10–86)
China (PB 21527, 8–15–85) (PB 21573, 7–3–86) (PB 21575, 7–17–86)
Egypt (PB 21527, 8–15–85)
Great Britain & Northern Ireland (PB 21536, 10–17–85)
Japan (PB 21561, 4–10–86 and PB 21563, 4–24–86)
New Zealand (Change in reciprocal name)
Portugal (PB 21527, 8–15–85)
Saudi Arabia (PB 21551, 1–30–86)
South Africa (PB 21542, 11–28–85) (PB 21576, 7–24–86)
Turkey (PB 21527, 8–15–85) (PB 21573, 7–3–86)

Appendix E is revised to reflect new ISAL exchange offices and destination countries. (PB 21542, 11–28–85, and PB 21549, 1–16–86) (PB 21570, 6–12–86) (PB 21582, 9–4–86).

Individual Country Listings are revised to reflect the following changes:

a. New four pound weight limit for air and surface Small Packets for most countries (PB 21543, 12–5–85 and PB 21555, 2–27–86) (PB 21567, 5–22–86) (PB 21573, 7–3–86) (PB 21579, 8–14–86)

b. New or revised parcel post insurance service to certain countries. (PB 21543, 12–5–86 and PB 21557, 3–13–86) (PB 21579, 8–14–86).

c. Corrections to parcel post rate charts for several countries. (PB 21551, 1–30–86).

d. Other individual country listings are revised to reflect new or changed prohibitions and restrictions as published by the International Bureau and to correct printing errors and omissions in Issue 3 (PB 21570, 6–12–86).

e. Separate country sheets for Anguilla, British Virgin Islands, Montserrat, Wallis and Futuna Islands.

List of Subjects in 39 CFR Part 10

Postal Service, Foreign relations, Incorporation by reference.

PART 10—[AMENDED]

1. The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Section 10.3 is amended by adding at the end thereof the following:

§ 10.3 Amendments to the International Mail Manual

* * * * *

Transmittal letter for issue	Dated	FR Publication
* * * * *		
4	September 18, 1986.	52 FR ____

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87–1916 Filed 2–2–87; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–9–FRL–3148–1]

Approval and Promulgation of Implementation Plans; Five Districts in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On February 10, 1986 the California Air Resources Board (CARB) submitted a set of revisions to the California State Implementation Plan (SIP) affecting the Butte County Air Pollution Control District (APCD), the Lake County APCD, the Placer County APCD (Mountain Counties portion), the Sutter County APCD, and the Tehama County APCD. This notice takes action on the noncontroversial, administrative rules from the submittal package. The revisions strengthen or retain equivalent emission control requirements, and are consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy. Thus, EPA has determined that these revisions should be approved.

EFFECTIVE DATE: This action will be effective April 6, 1987 unless notice is received on or before March 5, 1987, that adverse or critical comments will be submitted.

ADDRESSES: Please address any comments to: Regional Administrator, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, ATTN: State Implementation Plan Section (A–2–3), Air Management Divison.

EPA's office in San Francisco has copies both of the submitted revisions and of EPA's technical Evaluation Report for each rule. These documents are available for public inspection during normal working hours.

A complete set of the rules is also available at the California Air Resources Board. For information on a rule pertaining to a specific county, the appropriate District may be contacted. Pertinent addresses are listed below.

California Air Resources Board, SIP Section, Technical Support Division, 1131 "S" Street, Sacramento, CA 95812
Butte County Air Pollution Control District, 316 Nelson Avenue, Oroville, CA 95965
Lake County Air Pollution Control District, 883 Lakeport Boulevard, Lakeport, CA 95453
Placer County Air Pollution Control District, 11582 B Avenue (Bldg. 117A), Auburn, Ca 95603
Sutter County Air Pollution Control District, 142 Garden Highway, Yuba City, CA 95991
Tehama County Air Pollution Control District, 1760 Walnut Street, Red Bluff, CA 96080
EPA Library, Public Information Reference Unit, Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Patty Monahan, State Implementation Plan Section (A–2–3), Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–9470; FTS 454–9470

SUPPLEMENTARY INFORMATION:

Background

On February 10, 1986, the California Air Resources Board submitted a package of revisions to the State Implementation Plan. This notice addresses some of those revisions. The rules EPA is approving in today's notice are primarily administrative and non-controversial. Minor rule changes have been adopted for clarity and to enhance administrative processes.

Below is a list of the rules addressed by this notice. An evaluation of the rules, as well as the intended EPA action, are contained at the end of the list.

Description of Regulations

Butte County APCD

Rule 3–3—Burning Permit Agencies (deletion)
Rule 101—Title
Rule 102—Definitions
Rule 250—Circumvention
Rule 260—Separation of Emissions
Rule 261—Combination of Emissions
Rule 270—Orchard Heaters
Rule 301—Prohibitions on Open Burning
Rule 302—Exemptions to Rule 301
Rule 303—Burning Permits
Rule 304—Exemptions to Rule 303
Rule 306—Information Furnished by Permit Applicant
Rule 307—Ignition Hours
Rule 308—Notice of Intent to Ignite
Rule 309—Freedom from Debris and Mositure
Rule 310—Arrangement of Agricultural and Wood Waste
Rule 311—Drying Period
Rule 312—Wind Direction
Rule 313—Ignition Devices
Rule 314—Burning of Vines or Bushes Treated with Herbicides
Rule 315—Rice Straw Burning
Rule 316—Field Crop Ignition
Rule 317—Field Crops Harvested Prior to September 10
Rule 318—Restriction of Burning During Poor Air Quality Conditions
Rule 320—Certificate from Department of Fish and Game
Rule 322—Special Permit
Rule 323—Range Improvement Burning
Rule 324—Burning at Disposal Sites
Rule 325—Exemption to Rule 324
Rule 401—General Requirements
Rule 402—Authority to Construct
Rule 403—Permit to Operate
Rule 405—Permit Conditions
Rule 406—Emissions Calculations
Rule 407—Anniversary Date
Rule 420—Standards for Granting Applications
Rule 421—Conditional Approval
Rule 422—Required Information
Rule 423—Action on Applications
Rule 425—Appeals
Rule 601—General
Rule 602—Filing Petition
Rule 603—Contents of Petition
Rule 604—Petition for Variance
Rule 605—Petition for Revocation of Permit
Rule 606—Petition for Reinstatement of Suspended Permit
Rule 607—Noncompliance with District Rules
Rule 608—Answers
Rule 609—Dismissal of Petition
Rule 610—Time and Place of Hearing
Rule 611—Notice and Hearing
Rule 612—Interested Members of Public; Special Notice
Rule 613—Evidence
Rule 614—Record of Proceedings
Rule 615—Preliminary Matters
Rule 616—Official Notice
Rule 617—Continuances
Rule 618—Decision
Rule 619—Effective Date of Decision
Rule 620—Appeal from Denial
Rule 621—Appeal and Petition for Variance after Permit Denial
Rule 701—Violation of Rules
Rule 702—Violation of Orchard Heater or Open Burning Regulations
Rule 703—Citations
Rule 704—Violation of Authority to Construct and Permit Conditions
Rule 801—Request for Variance
Rule 802—Conditions for Granting Variance
Rule 901—Severability Clause
Rule 902—Empower to Enter Upon Private Property

Lake County APCD

Rule 650D—Source Emission Testing
Rule 651—Source Emission Testing and Monitoring
Rule 1701Q—Interim Variance

Placer County APCD (Mountain Counties Portion)

Rule 102—Definitions
Rule 211A—Process Weight (deletion)
Rule 219M—Organic Solvents (deletion)
Rule 312—Minimum Drying Times
Rule 314—Preparation of Material to be Burned
Rule 315—Burning of Agricultural Waste
Rule 320—Open Burning Conducted by Public Officers
Rule 505—Cancellation of Authority to Construct
Rule 507—Provision of Sampling and Testing Facilities
Rule 803—Penalties

Tehama County APCD

Rule 2.12—Status of Permit

Rule 2.13—Transfers
Rule 2.14—Cancellation of Permits
Rule 2.15—Posting of Permit
Rule 2.16—Defacing
Rule 2.17—Public Records—Trade Secrets
Rule 5.2—General
Rule 5.3—Filing Petitions
Rule 5.6—Contents of Petitions
Rule 5.7—Petition for Variance
Rule 5.8—Petition for Abatement Order
Rule 5.9—Failure to Comply with Rules
Rule 5.10—Service of Notices
Rule 5.11—Answers
Rule 5.12—Withdrawal of Petitions
Rule 5.13—Place of Hearing
Rule 5.15—Rules of Evidence and Procedures
Rule 5.16—Preliminary Matters
Rule 5.17—Official Notice
Rule 5.18—Continuances
Rule 5.20—Effective Date of Decision
Rule 5.21—Issuance of Subpoenas: Subpoenas Duces Tecum
Rule 5.22—Confidential Information
Rule 5.23—Additional Rules

Sutter County APCD

Rule 2.5—Permit Regulations

EPA Evaluation

EPA has evaluated these rules for consistency with the Clean Air Act, 40 CFR Part 51, and EPA policy. All of the rules either strengthen or maintain the existing State Implementation Plan. Most of the rules contain minor changes which clarify administrative policies. The remaining rules offer: More specific definitions of agricultural burn materials, reduced hours for agricultural burns, greater authority to the air pollution control officer for controlling burns, and more precise hearing board and permitting procedures.

EPA's detailed evaluation of the submitted rules is available at the EPA Region 9 office.

EPA Action

This notice approves all the rule revisions previously listed and incorporates them into the California SIP. These rules are being approved because they are consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy. Thus, EPA proposes to approve these rules under section 110 and Part D of the Clean Air Act.

Regulatory Process

The Office of Management and Budget has exempted these rules from the requirements of section 3 of E.O. 12291.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

EPA's approval of the above revisions to the California SIP is being done without prior proposal because no critical comments from the public are expected. Unless adverse or critical comments are received by EPA within 30 days, this approval action will be effective 60 days from the date of publication of this **Federal Register** notice. If critical comments are received, this approval action will be withdrawn. A subsequent notice of proposed rulemaking will postpone the effective date, and a new comment period will be established.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 6, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, Carbon monoxide, Ozone, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: January 27, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

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

Subpart F—California

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.220 is amended by adding paragraph (c)(168) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(168) Revised regulations for the following APCD's were submitted by the Governor's designee on February 10, 1986.

(i) Incorporation by Reference.

(A) Butte County APCD.

(*1*) New or amended rules 101, 102, 250, 260, 261, 270, 301, 302, 303, 304, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 320, 322, 323, 324, 325, 401, 402, 403, 405, 406, 407, 420, 421, 422, 423, 425, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 701, 702, 703, 704, 801, 802, 901, 902, and 3–3 (repealed), adopted August 6, 1985.

(B) Lake County APCD.

(*1*) New rules 650D, 651, and 1701Q, adopted December 10, 1985.

(C) Placer County APCD (Mountain Counties portion).

(*1*) Amended rules 102, 312, 314, 315, 320, 505, 507, 803, 211A (repealed), and 219M (repealed), adopted May 20, 1985.

(D) Sutter County APCD.

(*1*) Amended rule 2.5, adopted October 15, 1985.

(E) Tehama County APCD.

(*1*) Amended rules 2.12, 2.13, 2.14, 2.15, 2.16, 2.17, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, 5.13, 5.15, 5.16, 5.17, 5.18, 5.20, 5.21, 5.22, and 5.23, adopted September 19, 1985.

[FR Doc. 87–1957 Filed 2–2–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 62

[A–6–FRL–3146–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Oklahoma; Plan for Controlling Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Production Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: This notice approves Oklahoma's 111(d) plan for the control of sulfuric acid mist (H_2SO_4) emissions from existing sulfuric acid production plants. The plan was submitted by the Oklahoma State Department of Health (OSDH) on December 5, 1985, and the sulfuric acid mist regulation (3.4(b)(2)) was submitted by the Governor of Oklahoma on March 31, 1986. The State adopted EPA's emission limitations for the control of sulfuric acid mist from existing sulfuric acid plants on March 11, 1978. The plan was submitted in response to the publication of emission control guidelines by the Administrator under section 111(d) of the Clean Air Act, as amended. The plan satisfies EPA's requirement for adoption and submittal of a plan to control H_2SO_4.

EFFECTIVE DATE: This action will be effective on April 6, 1987, unless notice is received on or before March 5, 1987, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Thomas H. Diggs of the EPA Region 6, Air Programs Branch, SIP/New Source Section (address below). Copies of the documents relevant to this action are available for public inspection during

normal business hours at the following locations.

Environmental Protection Agency, Region 6, Air, Pesticides and Toxics Division, Air Programs Branch, SIP New Source Section, 1201 Elm Street, Dallas, Texas 75270

Oklahoma State Department of Health, Air Quality Service, P.O. Box 53551, Oklahoma City, Oklahoma 73152.

FOR FURTHER INFORMATION CONTACT: Gregg Guthrie, Air Programs Branch, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270, telephone (214) 767–1597, or (FTS) 729–1597. Reference Docket File Number OK–85–5.

SUPPLEMENTARY INFORMATION: On December 5, 1985, the OSDH submitted the State's plan for controlling sulfuric acid mist emissions from existing sulfuric acid production plants. On March 31, 1986, the Governor of Oklahoma submitted Regulation 3.4(b)(2) Sulfuric Acid Mist which was received by EPA on April 21, 1986. The regulation was adopted by the Oklahoma State Board of Health after the January 10, 1978, public hearing. EPA reviewed the plan and developed an evaluation report,[1] which is based on the requirements of section 111(d) of the Clean Air Act of 1977, as amended, 40 CFR Part 60 Subpart B and EPA guideline document titled "Final Guideline Document: Control of Sulfuric Acid Mist Emissions from Existing Sulfuric Acid Production Units." This evaluation report is available for inspection during normal business hours at the EPA Region 6 Office and the other addresses listed above.

The plan meets all of EPA's criteria for approval. The emission limits in the Oklahoma Regulation 3.4(b)(2) are the same as EPA's limits. Oklahoma has two sources which produce H_2SO_4, National Zinc Co. and Tulsa Chemical Co. They are both in compliance. Therefore, compliance schedules are not required to be submitted.

The two sources are required by their permits to monitor on a continuous basis for sulfur dioxide (SO_2). This data is used to calculate the amount of H_2SO_4 being produced. A table showing the H_2SO_4 emission at per ton and per hour of product follows. Both sources are under their allowable limit of H_2SO_4 production.

Final Action

EPA is approving the Oklahoma 111(d) plan for the control of sulfuric acid mist from existing plants because the State's emission limits are the same as EPA's limits and the two sources affected by the plan are in compliance. This action is taken without prior proposal because the change is non-controversial and EPA anticipates no adverse comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 6, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

SULFURIC ACID (H_2SO_4) Emissions Data Table

	National Zinc Co.[1]		Tulsa Chemical Co.[2]	
	Pounds emission per ton	Pounds emission per hour	Pounds emission per ton	Pounds emission per hour
EPA limit	0.50	4.35	0.50	2.67
State limit	0.50	4.35	0.50	2.67
Emissions allowed	0.50	4.35	0.50	2.67
Actual emission	0.0057	0.50	0.034	0.18
Under limit	0.443	3.85	0.466	2.49

[1] Amount 100% H_2SO_4 produced is 17,410 lbs/hr.
[2] Amount 100% H_2SO_4 produced is 10,660 lbs/hr.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, Phosphate, Aluminum, Fertilizers, Paper and paper products industry, Sulfuric oxides, Sulfuric acid plant.

Dated: January 20, 1987.

Lee M. Thomas,

Administrator.

Title 40, Chapter I, Part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: Secs. 111 and 301(a), Clean Air Act, as amended (42 U.S.C. 7413 and 7601).

Subpart LL—Oklahoma

§ 62.9100 [Redesignated as § 62.9120]

2. The centerheading "Fluoride Emissions From Phosphate Fertilizer Plants" and § 62.9100 are redesignated as "Fluoride Emissions From Phosphate Fertilizer Plants" and § 62.9120, respectively.

§ 62.9110 [Redesignated as § 62.9130]

3. The centerheading "Fluoride Emissions From Primary Aluminum Reduction Plants", and § 62.9110 are redesignated and "Fluoride Emissions From Primary Aluminum Plants", and § 62.9130, respectively.

4. Subpart LL is amended by adding the following centerheading and § 62.9100 to read as follows:

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.9100 Identification of Plan.

(a) *Identification of plan:* Oklahoma Plan for Control of Designated Pollutants from Existing Facilities [111(d) Plan].

(b) The plan was officially submitted as follows:

(1) Control of sulfuric acid mist from existing sulfuric acid production plants submitted on December 5, 1985, with the corresponding regulation submitted by the Governor of Oklahoma on March 31, 1986.

(c) Designated facilities: The plan applies to existing facilities in the following categories of sources.

(1) Sulfuric acid production plants.

5. Subpart LL is further amended by adding the following new centerheading and § 62.9110 to read as follows:

[1] Evaluation Report for Oklahoma 111(d) Plan for the Control of Sulfuric Acid Mist from Existing Sulfuric Acid Production Plants.

Sulfuric Acid Mist From Existing Sulfuric Acid Plants

§ 62.9110 Identification of sources.

(a) *Identification of sources:* The plan includes the folloiwng sulfuric acid production plants.

(1) National Zinc Co. in Bartlesville, Oklahoma.

(2) Tulsa Chemical Co. in Tulsa, Oklahoma.

[FR Doc. 87-1760 Filed 2-2-87; 8:45am]

BILLING CODE 6560-50-M

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40 CFR Part 421

[OW-FRL-3149-8]

Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines for the Primary Rare Earth Metals Subcategory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; removal.

SUMMARY: On September 20, 1985 the EPA promulgated a final regulation establishing best practicable control technology currently available (BPT), best available technology economically achievable (BAT), new source preformance standards (NSPS), pretreatment standards for existing sources and pretreatment standards for new sources (PSES and PSNS) for the Nonferrous Metals Manufacturing industry under the Clean Water Act. One August 4, 1986, portions of the final regulation establishing BPT and BAT for the Primary Rare Earth Metals subcategory were remanded to the EPA by the Third Circuit Court of Appeals with directions to vacate those portions of the regulations. EPA is today removing those portions of the regulation from the Code of Federal Regulations so as to inform the public that the regulation is no longer effective.

EFFECTIVE DATE: The remand of these portions of the Nonferrous Metals Manufacturing regulation is effective as of August 4, 1986, the date of the Court's order.

FOR FURTHER INFORMATION CONTACT: Eleanor Zimmerman, 202-382-7126.

SUPPLEMENTARY INFORMATION: On September 20, 1985, EPA issued a final rule entitled "Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Final Rule," published at 50 FR 38276. That rule limited the discharge of pollutants into navigable waters of the United States and into publicly owned treatment works by existing and new nonferrous metals manufacturing facilities that process ore concentrates and scrap metals to recover and increase the metal purity contained in those materials. Specifically, the Agency established best practicable control technology currently available (BPT) effluent limitations guidelines, best available technology economically achievable (BAT) effluent limitations guidelines, new source performance standards (NSPS), and pretreatment standards for existing and new sources (PSES and PSNS) in the nonferrous metals manufacturing regulation.

Several parties filed petitions in the Court of Appeals challenging various aspects of this regulation. *AMAX INC., et al.*, v. *EPA* (85-3560). One petitioner in particular, Reactive Metals & Alloys Corp. (Remacor), submitted an issues list raising *inter alia* procedural issues with respect to the promulgation of limitations in the Primary Rare Earth Metals subcategory. Remacor is the only known existing direct discharger in this subcategory and, hence appears to be the only facility subject to the BPT and BAT requirements within the subcategory. In reviewing Remacor's issue list, the Agency found that formal written responses to Remacor's comments on both the proposed rule (49 FR 26352) and the notice of data availability (50 FR 10918) had not been prepared or placed in the record. The Agency, therefore, determined to seek a remand of those portions of the rulemaking afffecting Remacor.

The Agency and Remacor filed a Joint Motion for Voluntary Remand of the regulation in the Third Circuit Court of Appeals. On August 4, 1986, in response to the Joint Motion, the Court remanded the regulations at 40 CFR 421.272 and 40 CFR 421.273 with instructions to vacate those provisions.

Today's rulemaking formally removes the BPT and BAT limitations for the Primary Rare Earth Metals Subcategory (40 CFR 421.272 and 421.273) from the Code of Federal regulations. These effluent limitations have not been effective since August 4, 1986, the date the Court remanded these limitations.

Today's action does not in any way affect other limitations and standards established for the Nonferrous Metals Manufacturing Category which were published on September 20, 1985. These other limitations are still effective.

List of Subjects in 40 CFR Part 421

Metals, Nonferrous metals, Waste treatment and disposal, Water pollution control.

Dated: January 27, 1987.

Lee M. Thomas,

Administrator.

For the reasons stated above, 40 CFR Part 421 is amended as follows:

PART 421—NONFERROUS METALS MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for Part 421 continues to read as follows:

Authority: Secs. 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(b) and (c), 308, and 501 of Federal Water Pollution Control Act as amended (the "Act"); 33 U.S.C. 1251, 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

§ 421.272 [Removed and Reserved]

2. Section 421.272 is removed and reserved.

§ 421.273 [Removed and Reserved]

3. Section 421.273 is removed and reserved.

[FR Doc. 87-2078 Filed 2-2-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 799

[OPTS-42012D; FRL-3150-7]

Diethylenetriamine; Final Test Standards and Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 23, 1985, EPA issued a final rule under section 4(a) of the Toxic Substances Control Act (TSCA) requiring that manufacturers and processors of diethylenetriamine (DETA; CAS No. 111-40-0) test this substance for (1) oral subchronic (90-day) toxicity in at least one mammalian species, (2) dermal absorption in the same mammalian species used for the subchronic testing, (3) chemical fate under aerobic conditions, and (4) mutagenicity (including tests for both gene mutations and chromosomal aberrations). On April 10, 1986, the Agency proposed that the study plans submitted by an industry consortium be adopted, with certain revisions, as the test standards and reporting requirements for DETA under this test rule. EPA has reviewed the public comments on this proposal, and has decided to promulgate a final rule that specifies that these revised study plans, with certain additional revisions in response to public comment and Agency review, shall constitute the test

standards and reporting requirements for DETA.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271; February 21, 1985), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ("daylight" or "standard", as appropriate) time on February 17, 1987. This rule shall become effective on March 19, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460 (202–554–1404).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 23, 1985 (50 FR 21398), EPA issued a final Phase I rule under section 4(a) of TSCA to require testing of DETA for (1) oral subchronic (90-day) toxicity in at least one mammalian species, (2) dermal absorption in the same species used for the subchronic testing, (3) chemical fate under aerobic conditions, and (4) mutagenicity (including tests for both gene mutations and chromosomal aberrations). The Agency is now promulgating a final Phase II rule specifying that the EPA-modified industry-submitted study plans, with certain revisions, shall constitute the test standards and reporting requirements for this testing. This test rule is being promulgated under 40 CFR 799.1575.

I. Background

This document is part of the implementation of section 4 of the Toxic Substances Control Act (TSCA, Pub. L. 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.)*, which contains authority for EPA to require development of data relevant to assessing the risks to human health and the environment posed by exposure to particular chemical substances or mixtures.

Diethylenetriamine (DETA; CAS No. 111–40–0) was designated by the Interagency Testing Committee (ITC) for priority testing consideration (46 FR 28138; May 22, 1981). EPA responded to the ITC's designation by issuing a proposed test rule for DETA, published in the **Federal Register** of April 29, 1982 (47 FR 18386). Subsequently, in the **Federal Register** of May 23, 1985 (50 FR 21398), EPA promulgated a final Phase I rule requiring testing of DETA. EPA based the final testing requirements for DETA (for all effects except oncogenicity) on the authority of section 4(a)(1)(A) of TSCA. The Agency found that the manufacture, processing, use, and disposal of DETA may present an unreasonable risk of injury to human health due to potential mutagenic, oncogenic (after transformation to a *N*-nitrosamine derivative under environmental conditions), and subchronic effects of the substance. For a detailed discussion of EPA's findings and testing requirements for DETA, refer to the final Phase I rule. In accordance with the Test Rule Development and Exemption Procedures for two-phase rulemaking in 40 CFR Part 790, persons subject to this rule were required to submit letters of intent to perform the testing or exemption applications. Those submitting letters of intent were required to submit proposed study plans (including time schedules) for the testing required in the final Phase I rule.

On August 6, 1985 (Refs. 1 through 3), three U.S. manufacturers of DETA notified EPA of their intent to sponsor the testing required in the final Phase I test rule for DETA. Subsequently, an industry consortium (composed of these three manufacturers of DETA, one future manufacturer, and other current manufacturers or importers) known as the Diethylenetriamine Producers/Importers Alliance (DPIA) submitted an initial complete set of study plans for all of the testing required for DETA on October 7, 1985, and a set of study plans containing some revisions on December 2, 1985. In the **Federal Register** of April 10, 1986 (51 FR 12344), EPA proposed that the study plans submitted by the DPIA on December 2, 1985, be adopted, with certain revisions [referred to as the EPA-approved modified study plans for DETA (Ref. 4)], as the test standards and reporting requirements for the testing of DETA. After review of public comments, EPA is now promulgating a final Phase II rule requiring the DPIA, or its member companies, to conduct this testing in accordance with the revised EPA-approved modified study plans for DETA (Ref. 5). These plans incorporated revisions of Ref. 4 in response to public comments and shall constitute the test standards and reporting requirements for this substance.

II. Proposed Test Standards

The following member companies of the DPIA, Union Carbide Corporation, Dow Chemical Company, and Texaco Chemical Company, notified EPA by letter (Refs. 1 through 3) of their intent to sponsor the testing required in the final Phase I rule for DETA (40 CFR 799.1575). The DPIA, composed of the aforementioned three companies and Berol Chemicals, Inc., AZS Corporation, BASF Wyandotte Corporation, and Air Products and Chemicals, Inc., has submitted proposed study plans for the required testing, which, after evaluation, the EPA has revised, resulting in the EPA-approved modified study plans for DETA (Ref. 4). The study plans include the following studies: Fourteen-Day (Range-Finding) Dietary Toxicity Study with Diethylenetriamine in Albino Rats, Ninety-Day (Subchronic) Dietary Toxicity Study with Diethylenetriamine in Albino Rats, Absorption/Elimination Study of Diethylenetriamine following Dermal Application in Male and Female Fischer-344 Rats, Testing to Assess the Potential Environmental Production of *N*-Nitroso Adducts of Diethylenetriamine, Sex-linked Recessive Lethal Gene Mutation Test in *Drosophila melanogaster*, and an Evaluation of Diethylenetriamine in an *In Vitro* Chromosomal Aberration Assay Utilizing Chinese Hamster Ovary Cells. In addition, should the appropriate lower-tier mutagenicity tests yield certain results for DETA, the following mutagenicity tests will also be performed: Mouse Specific Locus Test for Visible Markers, Evaluation of Diethylenetriamine in the Mouse Bone Marrow Micronucleus Test, Dominant Lethal Assay of Diethylenetriamine in CD Rats, and Heritable Translocation Assay of Diethylenetriamine in CD–1 Mice.

The EPA-approved modified study plans for all of these tests (Ref. 4) are available for inspection in the public docket for this rulemaking. The Agency had previously proposed these plans as the test standards for conducting the testing of DETA required under 40 CFR 799.1575 in the proposed Phase II test rule for DETA, published in the **Federal Register** of April 10, 1986 (51 FR 12344). The Agency proposed that all of the testing be conducted in accordance with EPA's TSCA Good Laboratory Practice Standards as set forth in 40 CFR Part 792. In addition, the EPA-approved modified health effects study plans all conform to the appropriate TSCA Health Effects Test Guidelines (40 CFR Part 798) or contain justified deviations from the appropriate guidelines.

III. Proposed Reporting Requirements

EPA proposed (51 FR 12344; April 10, 1986) the schedules contained in the EPA-approved modified study plans for DETA (Ref. 4) as the reporting requirements for DETA. The proposed reporting deadlines for the submission of final reports are essentially in agreement with those suggested by the DPIA; however, for all testing required for DETA, the Agency proposed that brief interim progress reports be submitted to EPA at consecutive 3-month intervals following the date on which each test becomes mandatory

until the submission of the final report to EPA.

Subsequent to the issuance of the proposed Phase II test rule for DETA, the Agency has decided that interim reports for the testing required for substances under section 4 of TSCA at 6-month intervals, rather than at 3-month intervals, will be sufficient to keep EPA informed of the current status of required testing and of any difficulties which the testing facilities may encounter during the course of testing. In addition, this change will also lessen the reporting burden of test sponsors. Accordingly, the final reporting requirements for the testing required for DETA will reflect a requirement for 6-month, rather than 3-month, interim testing reports.

As required by TSCA section 4(d), the Agency plans to publish in the **Federal Register** a notice of the receipt of any test data submitted under this test rule within 15 days after receipt of the data. Except as otherwise provided in TSCA section 14, such data will be made available for examination by any person.

IV. Response to Public Comments

The only comments received by the Agency in response to the proposed Phase II test rule for DETA were from the Diethylenetriamine Producers/Importers Alliance (DPIA). The major issues identified during the comment period are discussed below.

A. Sponsorship of Required Testing

The DPIA, a group of producers and importers and a future manufacturer of DETA organized as a special project of the Synthetic Organic Chemical Manufacturers Association, Inc. (SOCMA), commented that EPA had incorrectly indicated in the proposed Phase II test rule for DETA that the DPIA itself is sponsoring the testing required for DETA in 40 CFR 799.1575. The DPIA asserts that each test has a single member company as the sponsor and, thus, neither the DPIA nor SOCMA is a sponsor of any of the tests. As the Agency stated in the proposed Phase II test rule for DETA, EPA received letters (Refs. 1 through 3) from three member companies of the DPIA on August 6, 1985, notifying the Agency of their intent to sponsor certain of the tests required for DETA. On the same date, the Agency received exemption requests (Refs. 6 through 9) from all other member companies of the DPIA for all of the testing required for DETA. Each of these exemption requests noted that another member company of the DPIA had agreed to sponsor the testing for which the exemption was requested, and also indicated that the requester would enter into an agreement with the sponsoring companies regarding reimbursement of the sponsors' costs for testing. In addition, the revised study plans for the testing required for DETA, which were received by the Agency on December 2, 1985, were submitted by the DPIA itself rather than by the three individual member companies which had earlier indicated by letter to the Agency their intent to sponsor certain tests for this substance, and were accompanied with a cover letter from the DPIA referring to the study plans as "the DPIA study plans" (Ref. 4). Thus, from a financial and organizational point of view, the Agency asserted in the proposed Phase II test rule for DETA that the DPIA had, due to its submission of revised study plans to the Agency on December 2, 1985, notified the EPA of their agreement to sponsor the testing required for DETA in 40 CFR 799.1575, for which letters of intent to sponsor testing had been previously received from three separate member companies (Refs. 1 through 3). However, from a strictly technical point of view, the EPA agrees with the DPIA that neither the DPIA nor SOCMA is a sponsor of any of the tests required for DETA. The individual sponsoring companies of the DPIA, together with a list of the tests which each company is sponsoring, is presented here in tabular form for clarification.

For the sake of brevity however, the study plans submitted collectively to the Agency by the DPIA on December 2, 1985, as revised by EPA, shall be referred to as the EPA-approved modified study plans for DETA (Ref. 4), originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA). The study plans resulting from revisions to Ref. 4 due to public comment and Agency review shall be referred to as the revised EPA-approved modified study plans for DETA (Ref. 5), originally submitted by the DPIA.

SPONSORS OF TESTING FOR DETA

Sponsoring Co.	Test(s) sponsored
Dow Chemical Company.	Sex-linked recessive lethal test in *Drosophila*.
	In vitro cytogenetics test.
	In vivo cytogenetics test.
	Dermal absorption test.
	Chemical fate test.
Union Carbide Corporation.	Dominant lethal test.
	Heritable translocation test.

SPONSORS OF TESTING FOR DETA

Sponsoring Co.	Test(s) sponsored
Texaco Chemical Company.	90-Day subchronic toxicity test.
	Mouse visible specific locus test.

B. Mouse Visible Specific Locus Assay

The DPIA commented on a number of issues related to the mouse visible specific locus (MSL) assay which it believes should be discussed during the Agency's public program review of all of the then available mutagenicity data for DETA which, as described in the final Phase I test rule for DETA, published in the **Federal Register** of May 23, 1985 (50 FR 21398), will precede the initiation of the testing of DETA in the MSL test. The DPIA correctly comments that, by modifying the study plan contained in Ref. 4 identified as the "Mouse Specific Locus Test for Visible Markers" by changing the last sentence in section D.1. on page 4 of the study plan to read: "A laboratory with no prior experience with the test shall provide negative and positive control validation data conforming to the requirements of 40 CFR 798.2500(d)(4)(i), prior to performing the assay," the EPA is requiring that a laboratory with no previous experience with the test must create an adequate historical data base before the Agency would view the testing facility as a "qualified" or "available" one.

The DPIA further comments that an industrial testing laboratory which it consulted estimates that the cost of obtaining such control validation data would be very high [probably exceeding the cost of a 104-week rodent carcinogenicity bioassay (over 1 million dollars)], and that it is clear from the Agency's economic analysis for all of the testing required for DETA in the final Phase I test rule for this substance (50 FR at 21410; May 23, 1985) that the development of historical control data for the MSL was not considered to be included in the test requirement for the assay itself. Additionally, the DPIA requests that the proposed final Phase II test rule for DETA be amended to reflect that the development of adequate control data for the MSL assay is not included in the test requirement for the assay itself but is a precondition to the qualification of a laboratory to conduct the test.

The DPIA also suggests that EPA might use the authority of section 10(a) of TSCA to enter into contracts with or make grants to several laboratories for developing adequate control data for the MSL assay to insure that adequate and qualified testing facilities are available for the testing of substances having TSCA section 4(a) testing requirements for this assay. The DPIA asserts that the use of TSCA section 10(a) authority in this regard should not be limited to a single testing facility, since this might result in a monopoly with respect to testing in the MSL assay.

The Agency agrees with the DPIA that the issues which it has raised and which are presented above are appropriate topics, among others, to be discussed during the EPA's public program review of all of the then available mutagenicity data for DETA which, as described in the final Phase I test rule for DETA, will precede the initiation of the testing of DETA in the MSL test. The EPA also agrees with DPIA that, for a laboratory to be considered a qualified and available testing facility for the MSL assay, it must have or develop adequate control validation data in conformance to the requirements of 40 CFR 798.2500(d)(4)(i).

On the other hand, the Agency disagrees with the DPIA's assertion that a potential requirement for the development of the positive and negative control data necessary for a laboratory which has had no prior experience with the MSL assay is not an integral part of the testing requirement for DETA (or other substances subject to a similar test rule requirement) in the MSL assay. This potential requirement is clearly stated in the revised EPA-approved modified study plan for the testing of DETA in the MSL assay (Ref. 5), which conforms to the requirements for this assay described in 40 CFR 798.2500(d)(4)(i). However, this is a potential requirement, because any laboratory having previous experience with this assay will most likely already possess the required control data and, therefore, will not need to expend any additional time for financial resources to develop such data prior to the testing of DETA in the MSL assay. Thus, the development of positive and negative control data for the testing of DETA in the MSL is a potential mandatory activity contained in the requirement for this assay established for DETA in the final Phase I test rule for this substance. However, should the required testing of DETA in the MSL assay be performed by a laboratory having had previous experience with this assay, and possessing the required positive and negative control data, development of additional control data will not be required.

The DPIA is correct in asserting that the economic analysis for the testing required for DETA contained in the final Phase I test rule for this substance did not include the cost of developing the positive and negative control data for the MSL assay. This cost was not included in the economic analysis because the Agency believes it to be highly unlikely that this expense will have to be incurred by the test sponsor for this required testing for DETA. As stated in the final Phase I test rule for this substance, the Agency believes that commercial testing facilities may decide to develop the required control data to enable them to perform this assay as these laboratories become familiar with the fact that the MSL assay is being required in many TSCA section 4(a) test rules for substances requiring testing for eliciting gene mutations.

In addition, EPA met with representatives from the U.S. Department of Energy (DOE) on October 3, 1986, to discuss the feasibility of having Oak Ridge National Laboratory (ORNL; operated by DOE) perform the MSL assay for test sponsors of chemical substances having a TSCA section 4(a) test rule requirement for this assay, should no other qualified testing facility offer this assay at the time such a requirement becomes mandatory. As outlined in EPA's summary of this meeting, ORNL already possesses the required historical control data for the MSL assay, and is capable of performing the assay for test sponsors in compliance with EPA's Good Laboratory Practice Standards. Test sponsors wishing to utilize ORNL for this purpose would contract with and reimburse ORNL directly, and would supply the additional personnel and funding required by ORNL to comply with EPA's Good Laboratory Practice Standards. As discussed at the DOE/EPA meeting, ORNL has previously performed the MSL assay for the artificial sweetener, cyclamate, in compliance with the U.S. Food and Drug Administration's (FDA's) Good Laboratory Practice Standards at an industry group's expense. Discussions at the DOE/EPA meeting did indicate that some financial issues remain to be resolved regarding ORNL's performing the MSL assay for test sponsors, but those test sponsors wishing to utilize ORNL for this purpose should discuss these issues directly with ORNL prior to EPA's public program review of all of the available mutagenicity data for substances subject to a test rule requirement for the MSL assay. Test sponsors could then discuss with EPA the results of their preliminary contract negotiations with ORNL during the public program review. A summary of the DOE/EPA meeting held on October 3, 1986 has been placed in the docket for this rulemaking. Because of its discussion with DOE, EPA does not now contemplate exercising its authority under section 10(a) of TSCA to fund the development of the required control data for the MSL assay by a commercial laboratory. Should it become apparent that the number of substances requiring this assay as a result of TSCA section 4(a) test rules is substantial, commercial laboratories may well decide to expend the necessary funds to develop the control data to enable them to offer the assay on a commercial basis.

C. Reporting Requirements

The DPIA commented that the proposed reporting requirements for all of the testing required for DETA contained in the EPA-approved modified study plans for DETA (Ref. 4) are reasonable, except for those proposed for the mouse visible specific locus (MSL) assay and the heritable translocation assay. With respect to the MSL assay, the proposed reporting requirement mandated that the final report be submitted to the Agency within 62 months of the effective date of the final Phase II test rule for DETA. This proposed reporting requirement allowed 48 months for the completion of the MSL assay itself, with 14 months after the effective date of the final Phase II test rule for DETA being added to this figure for the previous completion of the required sex-linked recessive lethal assay of DETA in *Drosophila melanogaster*. A positive response in the latter assay is necessary before EPA initiates a public program review of all of the mutagenicity data on DETA available at that time to determine if the required testing in the MSL assay should be initiated (50 FR 21398; May 23, 1985). The DPIA asserts that, if the time required for EPA to conduct the public program review is for some reason prolonged, the proposed reporting requirement for the MSL assay would result in significantly shortening the 48-month time period allowed for performing this assay. Therefore, DPIA suggests that the proposed reporting requirement for the MSL assay be changed to indicate that the final report shall be submitted to the Agency within 48 months after the test sponsor has been notified of EPA's decision, after the public program review, that the required testing of DETA in this assay should be

initiated. In addition, the DPIA suggests that, should EPA decide that the initiation of testing in the MSL assay is necessary, and no testing facility willing to perform the testing in a manner consistent with test rule requirements possesses the necessary control validation data, then up to 30 months should be added to the time period allowed of the performance of the MSL assay (a total of 78 months) to allow for the development of the necessary control data.

The Agency has carefully considered these comments. Although EPA does not expect the time period required for its public program review preceding the decision on the initiation of the testing of DETA in the MSL assay to significantly shorten the 48-month period allowed for performance of this assay, the Agency does agree that the 48-month period allowed for testing would be significantly shortened under the proposed reporting requirement for this assay (Ref. 4), should some unforeseen circumstances lengthen the period required for EPA's public program review. On the other hand, as discussed in Unit IV.B. of this preamble, it is likely that the test sponsor for the MSL assay of DETA will be able to contract for this testing with the Oak Ridge National Laboratory (ORNL), or another qualified testing facility which may exist when testing is required, and, therefore, additional time and funds for the development of the necessary control data will not be required.

The Agency recognizes that scheduling problems at ORNL, or at a qualified commercial laboratory which may be offering the MSL assay at the time that this assay is required for DETA, might significantly decrease the 48-month period allowed for completion of this testing following EPA's notification of the test sponsor. However, the test sponsor for this assay will have ample time to investigate any such scheduling problem during the period from EPA's notification by industry of a positive test result for DETA in the sex-linked recessive lethal test in *Drosophila* until the time of EPA's public program review of all of the then available mutagenicity data for DETA, which, as described in the final Phase I test rule for this substance, will precede EPA's decision whether or not testing in the MSL assay should be initiated for DETA. Thus, the test sponsor may discuss any scheduling concerns with EPA during the public program review.

In view of these comments, the EPA is requiring in the final Phase II test rule for DETA that the final report resulting from the testing of this substance in the MSL assay shall be submitted to the Agency within 48 months from the designated date contained in EPA's notification of the test sponsor by certified letter or **Federal Register** notice of the Agency's decision, following a public program review of all of the then available mutagenicity data for DETA resulting from a positive test result for this substance in the sex-linked recessive lethal assay in *Drosophila melanogaster*, that the required testing must be initiated. Seven interim (6-month) reports shall be submitted to the Agency, commencing at 6 months following the designated date. These reporting requirements, incorporated into the final Phase II test rule for DETA, are contained in the revised EPA-approved modified study plans for DETA (Ref. 5) and are reflected in Unit V.B. of this preamble.

With respect to the heritable translocation assay, the proposed reporting requirement (Ref. 4) mandated that the final report be submitted to the Agency within 38 months of the effective date of the final Phase II test rule for DETA. This proposed reporting requirement allowed 18 months for the completion of the heritable translocation assay itself, with 20 months after the effective date of the final Phase II rule for DETA being added to this figure for the previous completion of the required *in vitro* cytogenetics test, the potentially required *in vivo* cytogenetics test, and the dominant lethal test of DETA. A positive response in the dominant lethal assay is necessary before the EPA initiates a public program review of all of the then available mutagenicity data on DETA to determine if the required testing in the heritable translocation assay should be initiated (50 FR 21398; May 23, 1985). The DPIA asserts that, if the time required to conduct the public program review is for some reason prolonged, the proposed reporting requirement for the heritable translocation assay (Ref. 4) would result in significantly shortening the 18-month time period allowed for performing this assay. Therefore, the DPIA suggests that the proposed reporting requirement for the heritable translocation assay be changed to indicate that the final report shall be submitted to the Agency within 18 months after the test sponsor has been notified of EPA's decision, following the public program review, that the required testing of DETA in this assay should be initiated.

In view of these comments, the EPA is requiring in this final Phase II test rule for DETA that the final report resulting from the testing of this substance in the heritable translocation assay should be submitted to the Agency within 18 months from the designated date contained in EPA's notification of the test sponsor by certified mail or **Federal Register** notice of the Agency's decision, following public program review of the then available mutagenicity data for DETA (resulting from a positive test result for DETA in the dominant lethal assay), that the required testing in the heritable translocation assay should be initiated. Two interim (6-month) reports shall be submitted to the Agency, commencing at 6 months following the designated date. These reporting requirements, incorporated into this final Phase II test rule for DETA, are contained in the revised EPA-approved modified study plans for DETA (Ref. 5) and are reflected in Unit V.B. of this preamble.

D. Chemical Fate Testing

The DPIA correctly noted that the EPA-approved modified study plan entitled "Potential Environmental Production of *N*-Nitroso Adducts of Diethylenetriamine", contained in Ref. 4 and proposed as the test standard and reporting requirements for DETA in the proposed Phase II test rule for this substance, differed from the DPIA-submitted study plan in that Alternative 1 was deleted from the industry-submitted plan and Alternative 2 was mandated for use. Alternative 1 in the DPIA-submitted study plan stipulated that the chemical fate of DETA would first be investigated in samples of sewage; however, if no *N*-nitroso derivatives of DETA were found to be produced in sewage, chemical fate studies of DETA would not then be conducted in samples of lake water and soil. Alternative 2 in the DPIA-submitted study plan stipulated that the chemical fate studies would be conducted in samples of sewage, as well as in samples of lake water and soil, whether or not a *N*-nitroso derivative of DETA was found to be produced in sewage samples. As explained in the proposed Phase II test rule for DETA, this change in the DPIA-submitted study plan was necessary because only Alternative 2 of the plan meets the testing specified to be performed for DETA in the final Phase I test rule for DETA, which clearly indicates that chemical fate testing is to be performed in samples of sewage, lake water, and soil, regardless of the test results obtained in any one or more of these environmental media [40 CFR 799.1575(d)(i)]. If it had been the intent of the Agency to predicate the requirement for the chemical fate testing of DETA in lake water and soil upon

positive test results in tests with sewage, the language used in final Phase I test rule would have so stated. The DPIA, in its comments on the proposed Phase II test rule for DETA asserts that it believes the chemical fate testing requirement established for DETA in the final Phase I test rule for this substance is unreasonable and may impose upon industry entirely unnecessary testing, continuing to assert that Alternative 1 in the DPIA-submitted study plan for the chemical fate testing of DETA should be followed.

As described in the final rule for test rule development and exemption procedures [49 FR 39774; October 10, 1984], it is the final Phase I test rule which, in a two-phase rulemaking such as that employed for DETA, specifies the health and environmental effects and other characteristics for which data are required to be developed. With respect to the chemical fate testing of DETA, the data required to be developed are clearly stated in the final Phase I test rule for this substance to be: "Testing to assess *N*-nitrosamine formation, resulting from aerobic biological and/or chemical transformation, shall be conducted with DETA using environmental samples of lake water, sewage, and soil" [40 CFR 799.1575(d)(i)]. Thus, the required chemical fate tests mandated for DETA are already determined by final rule, and are not an appropriate subject for comments on the proposed Phase II test rule for DETA, which proposes test standards (methodology) and reporting requirements for conducting the already required tests. As stated in Unit V.D. of this preamble, EPA received no petitions for review of the final Phase I rule for DETA, and accordingly any petition for judicial review of this final Phase II test rule for DETA will be limited to a review of the test standards (methodology employed to perform the tests required in the final Phase I rule) and reporting requirements for this substance which are established in this notice. In view of these facts, the Agency believes that it is not legally obligated to respond to the DPIA's comments regarding the required chemical fate tests to be conducted with DETA which have already been established [40 CFR 799.1575(d)(i)].

Notwithstanding the lack of a legal obligation to respond to the DPIA's comments on the required chemical fate tests for DETA, the Agency has decided to respond to these comments to further clarify the scientific basis and rationale supporting the selection of the chemical fate tests required for DETA in the final Phase I test rule for this substance. The DPIA believes that the aerobic chemical and/or biological transformation of DETA to a *N*-nitrosamine derivative(s) will be much greater in samples of sewage than in samples of lake water or soil; therefore, the DPIA maintains that testing should be conducted in aerobic sewage first, with no further testing in lake water or soil if no *N*-nitrosamine derivative(s) of DETA are produced in sewage samples. The DPIA cites a memorandum of February 27, 1984, from Dr. Robert Brink, Senior Scientist, Exposure Assessment Branch, Exposure Evaluation Division, EPA, to Mr. Raymond K. Locke, Test Rules Development Branch, Existing Chemical Assessment Division, EPA (Ref. 10), in support of this position. Dr. Brink's position on this matter, as well as the positions of others, were carefully considered by EPA, which, for the reasons outlined below, decided that the chemical fate testing of DETA was necessary in all three environmental media (sewage, lake water, and soil) to develop the data necessary to determine the risks posed to human health due to drinking water potentially contaminated with a *N*-nitrosamine derivative(s) of DETA which might enter the drinking water supply via any one of these three environmental media.

The DPIA asserts that it is well known that sewage contains higher concentrations of nitrites (a necessary reactant for *N*-nitrosamine formation) than either lake water or soil; thus, aerobic sewage would provide a more favorable environment for the direct chemical production of *N*-nitrosamine derivative(s) of DETA than either lake water or soil. The Agency agrees with this comment, but, as pointed out in the final Phase I test rule for this substance, the Agency is concerned about the total transformation, whether biological or purely chemical in nature, of DETA present in water, sewage, or soils to an *N*-nitrosamine derivative of the substance, which the Agency views as a potential carcinogen and which may enter the drinking water supply.

The DPIA asserts that aerobic sewage would also provide a more favorable environment for formation of *N*-nitrosamine derivatives of DETA through biological activity, since sewage is a richer source of both bacteria and the nutrients required for their growth than is soil or lake water. The Agency notes that it is a well known fact that the types of microorganisms expected to be present in sewage will differ from those expected to be present in soil and lake water, both with respect to their concentration and species. The enzymatic activities present in these organisms are also well known to differ; therefore, without testing, it is not possible to predict that the greater concentration of microorganisms present in sewage, with respect to soil and lake water, would necessarily lead to a greater biological transformation of DETA to a *N*-nitrosamine derivative(s) in sewage as opposed to the other two environmental media. Even though the concentration of the microorganisms is greater in sewage, their enzymatic capability to effect the transformation of DETA to a *N*-nitrosamine derivative may be less than that possessed by the different microorganisms present in soil and lake water. Thus, it is not possible to predict, without testing, that the total chemical and biological transformation of DETA to a *N*-nitrosamine derivative(s) will necessarily be greater in sewage than in either soil or lake water, and testing is necessary in all three environmental media.

The DPIA correctly observes that Yordy and Alexander (Ref. 11) demonstrated that a chemical analogue of DETA, diethanolamine, was transformed to an *N*-nitrosamine derivative in sewage at a rate much greater than that observed in lake water. From these data, the DPIA concludes that, if a *N*-nitrosamine derivative(s) is produced from DETA, the amount of the derivative(s) generated in sewage would be higher than that generated in lake water or soil. The Agency disagrees with the DPIA's conclusions from these data. First, the data presented by Yordy and Alexander (Ref. 11) do not deal in any respect with the transformation of diethanolamine, an analogue of DETA, to its *N*-nitrosamine derivative in samples of soil. Secondly, these data on diethanolamine, a chemical analogue of DETA, cannot even be used to reliably predict that the transformation of DETA itself to a *N*-nitrosamine derivative(s) would necessarily be greater in sewage than in lake water. The biological transformation of DETA to such a derivative(s) in all three of these environmental media is dependent upon the enzymatic activities present in the microorganisms occurring in these media. Enzymatically catalyzed transformations are very much dependent upon the chemical structure of the substance undergoing reaction. It is well known that very small changes in the chemical structure of a substance known to be readily transformed to another substance by an enzymatic reaction can lead to a total loss of the enzyme's ability to catalyze the transformation. Although diethanolamine and DETA are chemically similar, they are different in

that the two primary amino groups present in DETA have been replaced by two hydroxyl groups in diethanolamine. This difference in chemical structure may well result in great differences in the relative extent of the enzymatic biological transformation of DETA to a *N*-nitrosamine derivative(s) in samples of sewage and lake water with respect to those observed for diethanolamine by Yordy and Alexander (Ref. 11). No data are available for diethanolamine with respect to soil. Thus, without testing, it is impossible to predict that DETA would be biologically transformed to a *N*-nitrosamine derivative(s) in aerobic sewage to a much greater extent than in aerobic soil or lake water, and the testing of DETA in all three environmental media is, therefore, necessary.

The DPIA correctly comments that an earlier study by Yordy and Alexander (Ref. 12) demonstrates that there is no significant difference in the degradation rate of the *N*-nitrosamine derivative of diethanolamine with respect to samples of sewage and lake water. The DPIA concludes from these data that one could not expect any significant difference in degradation rates for any *N*-nitrosamine derivative formed from DETA in samples of sewage and lake water. The Agency agrees that the data of Yordy and Alexander (Ref. 12) do not demonstrate a significant difference in the degradation of pure *N*-nitrosodiethanolamine in samples of sewage and two lake waters. However, the salient points to be derived from this study are that the degradation of this carcinogenic substance was slow in all three media and that this substance may persist in freshwater lakes for long periods of time during the winter months. The Agency disagress with the DPIA's conclusion that these data indicate that one would not expect significant differences in degradation rates for any *N*-nitrosamine derivative formed from DETA in sewage or lake water. Once again, the rates of degradation of the *N*-nitrosamine derivatives of DETA and diethanolamine are dependent upon enzymatically catalyzed reactions. Since the chemical structures of these *N*-nitrosamine derivatives are different, without testing one cannot reliably predict that results observed with the *N*-nitrosamine derivative of diethanolamine are those that would be observed for the *N*-nitrosamine derivative of DETA.

Finally, the DPIA asserts that the EPA is incorrect in asserting that the final Phase I test rule for DETA (50 FR 21398; May 23, 1985) precludes the use of Alternative 1 in the DPIA-submitted study plan for chemical fate studies of DETA. The DPIA asserts that 40 CFR 799.1575(d)(i) addresses testing in lake water, sewage, and soil, but does not specify the method for conducting such testing. The DPIA believes that Alternative 1 contained in the DPIA-submitted study plan for chemical fate studies of DETA is consistent with the requirements of the final Phase I test rule for DETA. As previously discussed in the second paragraph of Unit IV.D. of this preamble, the methodology for conducting the chemical fate testing of DETA presented in Alternative 1 of the DPIA-submitted study plan actually would change the required chemical fate tests mandated for DETA in 40 CFR 799.1575(d)(i), and Alternative 1 is, therefore, unacceptable.

In view of these comments, the Agency continues to require that testing to assess *N*-nitrosamine formation, resulting from aerobic biological and/or chemical transformation, shall be conducted with DETA using environmental samples of lake water, sewage, and soil. This requirement is contained both in this final Phase II test rule for DETA and in the revised EPA-approved modified study plans for DETA (Ref. 5).

V. Final Phase II Test Rule

A. Test Standards

The test protocols contained in the revised EPA-approved modified study plans for DETA (Ref. 5) shall be the test standards for the testing of DETA required under 40 CFR 799.1575. The Agency believes that the conduct of the required tests in accordance with the revised EPA-approved modified study plans for DETA will insure that the resulting data are reliable and adequate.

B. Reporting Requirements

The Agency is requiring that all data developed under this rule be reported in accordance with the TSCA Good Laboratory Practice (GLP) Standards (40 CFR Part 792).

The Agency is required by TSCA section 4(b)(1)(C) to specify the time periods during which persons subject to a test rule must submit test data. On the basis of the Agency's regulatory experience for the tests required for DETA, as well as in response to certain public comments, EPA is adopting the reporting requirements for these tests which are contained in the revised EPA-approved modified study plans for this substance (Ref. 5), and which are presented below.

REPORTING REQUIREMENTS FOR DETA

Test	Reporting deadline for final report (months after the effective date of final phase II rule, except as indicated)	Number of interim (6-month) reports required
Sex-linked recessive lethal test in *Drosophila*	14	2
Mouse visible specific locus assay	[1] 48	7
In vitro cytogenetics test	6	0
In vivo cytogenetics test	[2] 14 [3] (8)	1
Dominant lethal test	[2] 20 [3] (6)	0
Heritable translocation assay	[1] 18	2
90-Day subchronic toxicity test	15	2
Dermal absorption test	20	3
Chemical fate test	18	2

[1] Figure indicates the reporting deadline in months, calculated from the designated date contained in the notification of the test sponsor by certified letter or FEDERAL REGISTER notice that, following public program review of all of the then existing mutagenicity data for DETA, the Agency has determined that the required testing must be performed.

[2] Figure includes the time periods required for previous required testing.

[3] Figure in parentheses indicates the time period allowed for completion of the test itself, not including the time periods for previous required testing.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

C. Conditional Exemptions Granted

The final rule for test rule development and exemption procedures (40 CFR 790.87) indicates that, when certain conditions are met, exemption applicants will be notified by certified mail or in the final Phase II test rule for a give substance that they have received conditional exemptions from test rule requirements. The exemptions granted

are conditional because they will be given based on the assumption that the test sponsors will complete the required testing according to the test standards and reporting requirements established in the final Phase II test rule for the given substance. TSCA section 4(c)(4)(B) provides that if an exemption is granted prospectively (that is, on the basis that one or more persons are developing test data, rather than on the basis of prior test data submissions), the Agency must terminate the exemption if any test sponsor has not complied with the test rule.

Since sponsors have indicated to EPA by letters of intent (Refs. 1 through 3) their agreement to sponsor all of the test required for DETA in the final Phase I test rule for this substance (50 FR 21398; May 23, 1985) according to the test standards and reporting requirements established in this final Phase II test rule for DETA, the Agency is hereby granting conditional exemptions to all exemption applicants for all of the testing required for DETA in 40 CFR 799.1575.

D. Judicial Review

The promulgation date for the final Phase I test rule for DETA was established as 1:00 p.m. eastern daylight time on June 6, 1985 (50 FR 21398; May 23, 1985). EPA received no petitions for review of that Phase I final rule. Accordingly, any petition for judicial review of this final Phase II test rule for DETA will be limited to a review of the test standards and reporting requirements for this substance which are established in this notice.

E. Other Provisions

TSCA section 4 findings, required testing, test substance specifications, persons required to test, enforcement provisions, and the economic analysis are all presented in the final Phase I test rule for DETA (50 FR 21398; May 23, 1985).

VI. Rulemaking Record

EPA has established a record for this rulemaking, [Docket Number OPTS–42012D]. This record includes the basic information considered by the Agency in developing this rule and appropriate **Federal Register** notices.

This record currently includes the following information:

A. Supporting Documentation

(1) Final Phase I rule on diethylenetriamine (50 FR 21398; May 23, 1985).

(2) Proposed Phase II rule on diethylenetriamine (51 FR 12344; April 10, 1986).

(3) Contact reports of telephone conversations.

(4) Letters, memoranda, and meeting summaries related to this rulemaking.

(5) Public comments on the proposed Phase II rule on diethylenetriamine.

B. References

(1) Union Carbide Corporation. Letter from J. Cole to TSCA Public Information Office, USEPA. (August 2, 1985).

(2) Dow Chemical Company. Letter from W. Cornelius to TSCA Public Information Office, USEPA. (July 29, 1985).

(3) Texaco Chemical Company. Letter from F. Bentley to TSCA Public Information Office, USEPA. (August 5, 1985).

(4) Diethylenetriamine Producers/Importers Alliance (DPIA). Letter from A. Rautio (and attached study plans and associated cover letters for diethylenetriamine) to G. Timm, USEPA. (November 27, 1985). [And attached Confirmation of EPA's Receipt, Evaluation, and Revision. (February 10, 1986).]

(5) Diethylenetriamine Producers/Importers Alliance (DPIA). Letter from A. Rautio (and attached study plans and associated cover letters for diethylenetriamine) to G. Timm, USEPA. (November 27, 1985). [And attached Final EPA Revisions of Study Plans for Diethylenetriamine. (June 19, 1986).]

(6) Berol Chemicals, Inc. Letter from K. Dahlin to TSCA Public Information Office, USEPA. (August 2, 1985).

(7) Industrial Chemicals Division, Air Products and Chemicals, Inc. Letter from D. Hartter to TSCA Public Information Office, USEPA. (August 5, 1985).

(8) AZS Corporation. Letter from J. Cook to TSCA Public Information Office, USEPA. (August 2, 1985).

(9) BASF Wyandotte Corporation. Letter from R. Flaherty to TSCA Public Information Office, USEPA. (August 5, 1985).

(10) USEPA. Memorandum from R. Brink, Exposure Evaluation Division, to R. Locke, Test Rules Development Branch. (February 27, 1984).

(11) Yordy, J., and Alexander, M. "Formation of *N*-nitrosodiethanolamine from diethanolamine in lake water and sewage." *Journal of Environmental Quality* 10:266–270. (1981).

(12) Yordy, J.R., and Alexander, M. "Microbial metabolism of *N*-nitrosodiethanolamine in lake water and sewage." *Applied and Environmental Microbiology* 39:559–565. (1980).

The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing required for DETA is discussed in the Phase I test rule (50 FR 21398; May 23, 1985).

This final Phase II test rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments received from OMB, together with any EPA response to these comments, are included in the public record for this rulemaking.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

1. There is not a significant number of small businesses manufacturing DETA.

2. Small manufacturers and small processors of DETA are not expected to perform testing themselves or to participate in the organization of the testing efforts.

3. Small manufacturers and small processors of DETA will experience only minor costs, if any, in securing exemption for testing requirements.

4. Small manufacturers and small processors are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned the OMB control number 2070–0033. No public comments on these same requirements contained in the proposed Phase II rule for DETA (51 FR 12344; April 10, 1986) were submitted to the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: January 22, 1987.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, Chapter I of 40 CFR Part 799 is amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By amending § 799.1575 by revising paragraphs (c)(1)(ii), (2)(ii), (3)(ii), (4)(ii),

(d) and (e); and adding paragraphs (c)(1)(iii), (2)(iii), (3)(iii), (4)(iii) and (f) to read as follows:

§ 799.1575 Diethylenetriamine (DETA).

* * * * *

(c) * * *

(1) * * *

(ii) *Test standards.* The testing shall be conducted in accordance with the following revised EPA-approved modified study plans (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Sex-linked recessive lethal test in *Drosophila melanogaster*," and "Mouse specific locus test for visible markers." These revised EPA-approved modified study plans are available for inspection in EPA's OPTS Reading Room, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

(iii) *Reporting requirements.* (A) The sex-linked recessive lethal test of DETA in *Drosophila melanogaster* shall be completed and a final report submitted to the Agency within 14 months from the effective date of the final Phase II rule. Two interim progress reports shall be submitted at 6-month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(B) If required pursuant to paragraph (c)(1)(i)(B) of this section, the mouse specific locus test of DETA for visible markers shall be completed and a final report submitted to the Agency within 48 months from the designated date contained in EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated. Seven interim progress reports shall be submitted at 6-month intervals, the first of which is due within 6 months of EPA's designated date.

(2) * * *

(ii) *Test standards.* The testing shall be conducted in accordance with the following revised EPA-approved modified study plans (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "*In vitro* cytogenetics test," "*In vivo* cytogenetics test," "Dominant lethal assay of diethylenetriamine in CD rats," and "Heritable translocation assay of diethylenetriamine in CD–1 mice." These revised EPA-approved modified study plans are available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

(iii) *Reporting requirements.* (A) The *in vitro* cytogenetics testing of DETA shall be completed and a final report submitted to the Agency within 6 months of the effective date of the final Phase II rule.

(B) If required pursuant to paragraph (c)(2)(i)(B) of this section, the *in vivo* cytogenetics testing of DETA shall be completed and final report submitted to the Agency within 14 months of the effective date of the final Phase II rule. One interim progress report shall be submitted within 12 months of the final rule's effective date.

(C) If required pursuant to paragraph (c)(2)(i)(C) of this section, the dominant lethal testing of DETA shall be completed and a final report submitted to the Agency within 20 months of the effective date of the final Phase II rule.

(D) If required pursuant to paragraph (c)(2)(i)(D) of this section, the heritable translocation testing of DETA shall be completed and a final report submitted to the Agency within 18 months of the designated date contained in EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated. Two interim progress reports shall be submitted at 6-month intervals, the first of which is due within 6 months of EPA's designated date.

(3) * * *

(ii) *Test standard.* The testing shall be conducted in accordance with the following revised EPA-approved modified study plan (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Ninety-day (subchronic) dietary toxicity study with diethylenetriamine in albino rats." This revised EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

(iii) *Reporting requirements.* The testing shall be completed and a final report submitted to the Agency within 15 months of the effective date of the final Phase II rule. Two interim progress reports shall be submitted at 6-month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(4) * * *

(ii) *Test standard.* The testing shall be conducted in accordance with the following revised EPA-approved modified study plan (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Dermal absorption." This revised EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

(iii) *Reporting requirements.* The testing shall be completed and the final report submitted to the Agency within 20 months of the effective date of the final Phase II rule. Three interim progress reports shall be submitted at 6-month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(d) *Chemical fate testing*—(1) *Required testing.* Testing to assess *N*-nitrosamine formation, resulting from aerobic biological and/or chemical transformation, shall be conducted with DETA using environmental samples of lake water, sewage, and soil.

(2) *Test standard.* The testing shall be conducted in accordance with the following revised EPA-approved modified study plan (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Chemical fate." This revised EPA-modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

(3) *Reporting requirements.* The testing shall be completed and a final report submitted to the Agency within 18 months of the effective date of the final Phase II rule. Two interim progress reports shall be submitted at 6-month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(e) *Modifications.* Persons subject to this section are not subject to the requirements of § 790.50(a)(2)(ii) of this chapter.

(f) *Effective date.* The effective date of the final Phase II rule for diethylenetriamine is March 19, 1987.

[FR Doc. 87–2080 Filed 2–2–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–6904]

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2751.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorg. Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa	City of Phoenix	Sept. 30, and Oct. 7, 1985, *Arizona Business Gazette.*	The Honorable Terry Goddard, Mayor, City of Phoenix, City Hall, 25 West Washington, Phoenix, AZ 85003.	Sept. 26, 1986	040051
Connecticut: Hartford	Town of South Windsor	Dec. 24 and Dec. 31, 1986, *The Hartford Courant.*	The Honorable Richard J. Sartor, South Windsor Town, Manager, 1540 Sullivan Ave., South Windsor, CT 06074.	Dec. 22, 1986	090036
Florida:					
Collier	Unincorporated areas	Sept. 11 and Sept. 18, 1986, *Naples Daily News.*	The Honorable John Pfistor, Chairman, Collier County Commission, Collier County Government Complex, 3301 East Tamiami Trail, Naples, FL 33942.	Sept. 5, 1986	120067
Collier	City of Naples	Oct. 30 and Nov. 6, 1986, *The Naples Daily News.*	The Honorable Edwin J. Putzell, Mayor, City of Naples, City Hall, 735 Eighth St., South, Naples, FL 33940.	Oct. 21, 1986	125130
Georgia: Bibb and Jones	City of Macon and Bibb County.	Dec. 19 and Dec. 26, 1986, *Macon Telegraph and News.*	The Honorable George Israel, Mayor, City of Macon, P.O. Box 247, Macon, GA 31298.	Dec. 12, 1986	130011
Illinois: Du Page	City of West Chicago	Nov. 20 and Nov. 27, 1986, *West Chicago Press.*	The Honorable A. Eugene Rennels, Mayor, City of West Chicago, 475 Main St., West Chicago, IL 60185.	Nov. 12, 1986	170219
Kansas: Cowley	City of Winfield	Oct. 16 and Oct. 23, 1986, *Winfield Courier.*	The Honorable Bill Dexter, Mayor, City of Winfield, P.O. Box 646, Winfield, KS 67156.	Oct. 3, 1986	200071
Maryland: Anne Arundel	Anne Arundel County	Dec. 19 and Dec. 26, 1986, *The Capitol.*	The Honorable O. James Lighthizer, Anne Arundel County Executive, Arundel Center, P.O. Box 1831, Annapolis, MD 21404.	Dec. 9, 1986	240008
Ohio: Lorain	City of Lorain	Dec. 17 and Dec. 24, 1986, *Lorain Journal.*	The Honorable Alex M. Olejko, Mayor, City of Lorain, City Hall, 200 West Erie Ave., Lorain, OH 44052.	Dec. 8, 1986	390351
Tennessee: Shelby	Unincorporated areas	Sept. 12 and Sept. 18, 1986, *Commercial Appeal.*	The Honorable William N. Morris, Mayor, Shelby County, Shelby County Administrative Building, Suite 850, 160 North Mid America Mall, Memphis, TN 38103.	Aug. 29, 1986	470214
Texas:					
Tarrant	City of Blue Mound	Dec. 5 and Dec. 12, 1986, *Fort Worth Star-Telegram.*	The Honorable Dale Jensen, Mayor of the City of Blue Mound, Blue Mound City Hall, 1600 Bell Ave., Fort Worth, TX 76131.	Dec. 1, 1986	480587
Dallas, Denton, and Collin	City of Carrollton	Jan. 2 and Jan. 9, 1987, *Times-Chronicle.*	The Honorable Milburn Gravley, Mayor of the City of Carrollton, P.O. Box 110535, Carrollton, TX 75011-0535.	Dec. 23, 1986	480167
Fort Bend	Fort Bend County, Municipal Utility District No. 34.	Nov. 26 and Dec. 3, 1986, *The Herald-Coaster.*	Ms. Sally M. Woody, President of the Board of Directors, Fort Bend County Municipal Utility District No. 34, 2000 West Loop South, Suite 1600, Houston, TX 77027.	Nov. 18, 1986	480228

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Fort Bend	Fort Bend County, Municipal Utility District No. 35.	Nov. 21, and Nov. 28, 1986, *The Herald-Coaster.*	Ms. Patsy McPherson, President of the Board of Directors, Fort Bend County Municipal Utility District No. 35, 2000 West Loop South, Suite 1600, Houston, TX 77027.	Nov. 20, 1986	481519
Harris	Unincorporated areas	Oct. 10, and Oct. 17, 1986, *The Houston Post.*	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, TX 77002.	Sept. 26, 1986	480287
Tarrant	City of Hurst	Oct. 10 and Oct. 17, 1986, *Mid-Cities Daily News.*	The Honorable William Souder, Mayor of the City of Hurst, 901 Precinct Line Rd., Hurst, TX 76054.	Oct. 3, 1986	480601
Bexar	City of San Antonio	Oct. 15 and Oct. 22, 1986, *San Antonio Light.*	The Honorable Henry Cisneros, Mayor of the City of San Antonio, Bexar County, P.O. Box 9066, San Antonio, TX 78285.	Oct. 10, 1986	480055
Bexar	City of San Antonio	Nov. 28 and Dec. 5, 1986, *San Antonio Light.*	The Honorable Henry Cisneros, Mayor of the City of San Antonio, P.O. Box 9066, San Antonio, TX 78285.	Nov. 19, 1986	480045
Smith	City of Tyler	Nov. 11 and Nov. 18, 1986, *Tyler Courier-Times.*	The Honorable James R. Montgomery, Mayor of the City of Tyler, Smith County, P.O. Box 2039, Tyler, TX 75704.	Oct. 29, 1986	480571
Virginia: Arlington	Unincorporated areas	Nov. 17 and Nov. 24, 1986, *Northern Virginia Sun.*	The Honorable Mary Margaret Whipple, Chairman of the Arlington County Board of Supervisors, Arlington County Courthouse, 1400 North Courthouse Rd., Arlington, VA 22201.	Nov. 12, 1986	515520

Issued: January 16, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-2036 Filed 2-2-87; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2751.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorg. Plan No. 3 of 1978, E.O., 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois, Lake	Village of Lincolnshire, FEMA Docket #6728.	Aug. 28, 1986, Sept. 4, 1986, *The Deerfield Review*.	The Honorable Evelyn Cooper, Mayor, Village of Lincolnshire, 175 Olde Half Day Road, Lincolnshire, Illinois 60069.	July 24, 1986	170378
Iowa, Montgomery (Docket No. FEMA-6900).	City of Red Oak	Sept. 19, 1986, Sept. 26, 1986, *Red Oak Express*.	The Honorable Raymond Gustafson, Mayor, City of Red Oak, 601 6th Street, Red Oak, Iowa 51566.	Sept. 11, 1986	190210
Texas, Aransas, Nueces and San Patricio (FEMA Docket No. 6900).	City of Aransas Pass	Sept. 24, 1986, Oct. 1, 1986, *Aransas Pass Progress*.	The Honorable Robert B. Watson, Mayor of the City of Aransas Pass, P.O. Drawer X, 600 West Cleveland, Aransas Pass, Texas 78336.	Sept. 18, 1986	485453
Texas, Bexar	City of San Antonio (FEMA Docket No. 6728).	Aug. 11, 1986, Aug. 18, 1986, *San Antonio Light*.	The Honorable Henry Cisneros, Mayor of the City of San Antonio, Bexar County, P.O. Box 9066, San Antonio, Texas 78285.	July 3, 1986	480045

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: January 16, 1987.

[FR Doc. 87-2034 Filed 2-2-87; 8:45 am]

BILLING CODE 6718-01-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2751.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorg. Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
ALABAMA	
Montgomery (city), Montgomery, Elmore, Autauga and Lowndes Counties (FEMA Docket No. 6729)	
Alabama River:	
Approximately 0.9 mile downstream of confluence of Catoma Creek	*158
Just downstream of Interstate 65	*164
About 1,600 feet upstream of confluence of Galbraith Creek	*168
West End Ditch:	
At confluence with the Alabama River	*161
About 200 feet downstream of U.S. Highways 31 and 82	*162
Maps available for inspection at the Engineering Department, City Hall, P.O. Box 1111, Montgomery, Alabama.	
INDIANA	
Auburn (city), DeKalb County (FEMA Docket No. 6729)	
Cedar Creek:	
About 600 feet downstream of the Chessie System	*852
About 1,250 feet downstream of 9th Street	*857
About 1,550 feet upstream of First Street	*861
Maps available for inspection at the City Hall, P.O. Box 506, Auburn, Indiana.	
Nashville (town), Brown County (FEMA Docket No. 6901)	
North Fork Salt Creek:	
Just downstream of confluence with Jackson Branch	*602
About 0.63 mile upstream of confluence of Claylick Creek	*610
Just upstream of State Route 46 (near confluence of Gnaw Bone Creek)	*618
1,530 feet upstream of Old State Route 46	*621
Maps available for inspection at the Brown County Planning Commission, P.O. Box 401, Nashville, Indiana.	
MASSACHUSETTS	
Pittsfield (city), Berkshire County (FEMA Docket No. 6901)	
Southwest Branch:	
Upstream side of CONRAIL bridge	*976
Approximately 1,100 feet downstream of Cadwell Road	*978
Approximately 80 feet upstream of Cadwell Road	*982
Approximately 800 feet upstream of Cadwell Road	*985
Maps available for inspection at the Pittsfield Planning Board, 70 Allen Street, Room 205, Pittsfield, Massachusetts.	
MISSOURI	
Belton (city), Cass County (FEMA Docket No. 6729)	
Oil Creek:	
Just upstream of 155th Street	*977

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD). Modified
Just downstream of 162nd Street	*1,003
Just downstream of 163rd Street	*1,007
Maps available for inspection at the the City Hall, P.O. Box 230, Belton, Missouri.	
Grandview (city), Jackson County (FEMA Docket No. 6729)	
Oil Creek:	
About 0.48 mile downstream of 155th Street	*969
Just downstream of 155th Street	*977
Maps available for inspection at the Engineering Department, Attn: Harry Finley, 1200 Main Street, Grandview, Missouri.	
Independence (city), Jackson and Clay Counties (FEMA Docket No. 6901)	
Missouri River:	
At river mile 357.10	*739
At river mile 357.91	*740
Maps available for inspection at the Planning Department, City of Independence, 111 East Maple Street, Independence, Missouri.	
Platte County (unincorporated areas) (FEMA Docket No. 6729)	
Burlington Creek:	
About 2,200 feet downstream of 49th Street	*764
Just upstream of 49th Street	*775
About 900 feet upstream of Paradise Valley Road	*797
Maps available for inspection at the City Hall, P.O. Box 406, Platte City, Missouri.	
Riverside (city), Platte County (FEMA Docket No. 6729)	
Missouri River:	
About 0.86 mile downstream of the confluence of Line Creek	*757
About 0.55 mile upstream of Fairfax Bridge	*758
About 0.31 mile upstream of the confluence of Burlington Creek	*762
Burlington Creek:	
At confluence with the Missouri River	*762
Just downstream of State Highway 9	*762
Just upstream of State Highway 9	*764
About 400 feet upstream of Paradise Valley Road	*764
Line Creek:	
At confluence with the Missouri River	*757
Just downstream of Northwest Platte Road	*757
Maps available for inspection at the City Hall, P.O. Box 9135, Riverside, Missouri.	
NEW HAMPSHIRE	
Lebanon (city), Grafton County (FEMA Docket No. 6729)	
Mascoma River:	
Approximately 580 feet downstream of the Mascoma Street bridge	*509
Approximately 400 feet upstream of the Hanover Street bridge	*575
Maps available for inspection at the City Hall, 51 North Park Street, Lebanon, New Hampshire.	
NEW JERSEY	
Nutley (township), Essex County (FEMA Docket No. 6729)	
Third River:	
Downstream corporate limits	*43
Upstream side of Vreeland Avenue	*57
Approximately 570 feet downstream of Chestnut Street	*61
Downstream side of Chestnut Street	*64
Upstream side of Centre Street	*70
St. Pauls Branch:	
Downstream side of Elm Place	*54
Downstream side of dam	*78
Passaic River: Upstream corporate limits	*14
Maps available for inspection at the Municipal Engineer's Office, 1 Kennedy Drive, Nutley, New Jersey.	
NEW YORK	
Babylon (town), Suffolk County (FEMA Docket No. 6729)	
Atlantic Ocean: Entire shoreline within community	*15
Fire Island Inlet:	
At confluence with Atlantic Ocean	*15
At Captree State Park	*9
Great South Bay:	
At Western Concourse, extended	*10
At western end of Harding Avenue	*7
Maps available for inspection at the Engineering Division, Department of Planning and Development, Town Hall, 200 East Sunrise Highway, North Lindenhurst, New York.	
Bellport (village), Suffolk County (FEMA Docket No. 6729)	
Great South Bay:	
Shoreline at Browns Lane (extended)	*10
Approximately 350 feet south of intersection of Point Road and Thorn Hedge Road	*7
Approximately 650 feet southeast along Point Road from intersection of Point Road and Thorn Hedge Road	*6
Maps available for inspection at the Village Hall, 144 South Country Road, Bellport, New York.	
Greenburgh (town), Westchester County (FEMA Docket No. 6729)	
Sprain Brook:	
Downstream corporate limits	*180
2nd upstream corporate limits	*187
Maps available for inspection at 320 Knollwood Road, Greenburgh, New York.	
Patchogue (village), Suffolk County (FEMA Docket No. 6901)	
Great South Bay:	
Entire shoreline within community	*8
Shoreline of Patchogue River at Laurel Street, extended	*6
Maps available for inspection at the Patchogue Village Hall, 14 Baker Street, Patchogue, New York.	
Saltaire (village), Suffolk County (FEMA Docket No. 6712)	
Atlantic Ocean: Shoreline at Atlantic Walk (extended)	*15
Great South Bay: Shoreline at Pacific Walk (extended)	*6
Maps available for inspection at the Village Hall, P.O. Box P551, Bay Shore, New York.	
Southampton (town), Suffolk County (FEMA Docket No. 6729)	
Atlantic Ocean:	
At Southampton/Easthampton corporate limits	*13
Shoreline of Fairfield Pond	*9
Shoreline west of Village of Westhampton and Southampton Beach corporate limits	*15
Moriches Bay:	
At confluence with Clam Creek	*10
At Apacuck Point	*11
At intersection of South County Road and Baynor Drive	*9
Shoreline at Rogers Lane extended	*12
Quantuck Bay:	
Shoreline at Delarfield Street extended	*11
Shoreline at Quantuck Bay Road extended	*9
Shinnecock Bay:	
At Pine Neck Point	*11
Entire shoreline of Daves Creek	*8
At Ponquogue Point	*10
Shoreline at Sweet Briar Road extended	*12
Mecox Bay:	
Shoreline at Crescent Avenue extended	*11
Entire shoreline of Burnett Creek	*9
Wickapogue Road extended	*8
Maps available for inspection at the Town Clerk's Office, Town Hall, 116 Hampton Road, Southampton, New York.	
Southampton (village), Suffolk County (FEMA Docket No. 6729)	
Atlantic Ocean:	
At western corporate limits	*14
At Halsey Neck Lane extended	*13
At Phillips Pond	*8
Shinnecock Bay:	
Shoreline of Heady Creek at Pennies Landing extended	*8
At north end of Shinnecock Road extended	*10
Maps available for inspection at the Village Hall, 23 Main Street, Southampton, New York.	
Westhampton Beach (village), Suffolk County (FEMA Docket No. 6729)	
Atlantic Ocean: Entire shoreline within community	*15
Moriches Bay:	
Shoreline at west end of Fisk Avenue	*11
At Pond Point	*10
At Picket Point	*12
Shoreline at South Road extended	*9
Moneybogue Bay:	
Shoreline at Cross Lane extended	*11
At intersection of Stevens Lane and Mitchell Road	*9
Quantuck Bay:	
Shoreline at Sunswyck Lane extended	*11
Shoreline of Aspatuck River at Mortimer Street extended	*9
Maps available for inspection at the Village Office, Sunset Avenue, P.O. Box 991, Westhampton Beach, New York.	
NORTH CAROLINA	
Raleigh (city), Wake County (FEMA Docket No. 6901)	
Big Branch (Tributary to Walnut Creek):	
At confluence with Walnut Creek	*184
Just downstream of Rock Quarry Road	*186
About 800 feet upstream of Rock Quarry Road	*186
New Hope Tributary:	
At confluence with Marsh Creek	*216
Just upstream of dam located about 1300 feet upstream of the confluence with Marsh Creek	*223
Just downstream of dam located about 1500 feet downstream of New Hope Church Road	*239
Just upstream of dam located about 1500 feet downstream of New Hope Church Road	*250
Just downstream of dam located about 300 feet upstream of New Hope Church Road	*254
Just upstream of dam located about 300 feet upstream of New Hope Church Road	*271
Just downstream of dam located about 300 feet upstream of Waterbury Road	*280
About 600 feet upstream of Waterbury Road	*289
Perry Creek:	
Just upstream of Gresham Lake Dam	*251
Just downstream of Rock Quarry Bridge	*258
Walnut Creek:	
At mouth	*177
About 1.14 miles upstream of mouth	*177
Maps available for inspection at the Planning Department, P.O. Box 590, Room 307, Raleigh, North Carolina.	
OHIO	
Franklin (city), Warren County (FEMA Docket No. 6729)	
Carlisle Drain:	
About 0.86 mile downstream of the divergence with Dry Run	*669
Just downstream of the divergence with Dry Run	*671
Dry Run:	
At mouth	*673
Just downstream of Conrail	*674

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Just upstream of Conrail	*671
About 0.67 mile upstream of Conrail	*673
Tommys Run:	
Just downstream of the confluence of Greens Run	*702
About 400 feet upstream of the confluence of Greens Run	*709
Maps available for inspection at the City Manager, 35 East Fourth Street, Franklin, Ohio.	
Montgomery County (Unincorporated Areas) (FEMA Docket No. 6729)	
Holes Creek:	
Just upstream of Mad River Road	*799
About 400 feet upstream of Interstate 675	*893
About 2.0 miles upstream of State Highway 725	*909
Maps available for inspection at the Recorder's Office, 451 W. 3rd Street, 5th Floor, Dayton, Ohio.	
Newark (city), Licking County (FEMA Docket No. 6729)	
South Fork Licking River:	
Just upstream of confluence with Licking River landward of levee	*814
Just downstream of South 2nd Street landward of levee	*814
About 600 feet upstream of National Drive landward of levees	*816
Maps available for inspection at the City Hall, 40 W. Main Street, Newark, Ohio.	
OKLAHOMA	
Clinton (city), Custer County (FEMA Docket No. 6720)	
Washita River:	
Approximately 2,120 feet upstream of Gary Freeway	*1,485
Approximately 152 feet downstream of upstream corporate limits	*1,486
Maps available for inspection at the City Hall, 415 Gary Freeway, Clinton, Oklahoma.	
Oklahoma (city), Oklahoma County (FEMA Docket No. 6699)	
Lightning Creek Tributary 3:	
Approximately 100 feet upstream of South Walker Avenue	*1,231
Approximately 1,300 feet downstream of eastbound US 62 and Interstate 240 access road	*1,237
Approximately 45 feet downstream of eastbound US 62 and Interstate 240 access road	*1,243
Walnut Creek:	
Approximately 200 feet upstream of Hefner Road (Northwest 108th Street)	*1,204
Approximately 800 feet upstream of Hefner Road (Northwest 108th Street)	*1,205
Approximately 1,500 feet upstream of Hefner Road (Northwest 108th Street)	*1,208
Approximately 1,200 feet downstream of Northwest Expresaway (State Highway 3)	*1,221
Approximately 525 feet downstream of Northwest Expressway (State Highway 3)—Limit of Detailed Study	*1,225
Tributary 3 of Canadian River Tributary 1:	
Approximately 860 feet upstream of SW 119th Street	None
At upstream side of SW 119th Street	None
Maps available for inspection at the City Hall, 200 North Walker, Suite 302, Oklahoma City, Oklahoma.	
Oklahoma (city), Oklahoma, Canadian, Cleveland, McClain, and Pottawatomie Counties (FEMA Docket No. 6673)	
Tributary O of Canadian River Tributary 1:	
Upstream side of SW 134th Street	*1,192
Downstream side of Western Avenue	*1,197
Spring Creek West Branch:	
Upstream side of NW 122nd Street	*1,160
Upstream side of Roxboro Road	*1,170
Approximately 1,050 feet upstream of Roxboro Road	*1,172
Mustang Creek Tributary 3 East Branch:	
Approximately 150 feet upstream of the confluence of Mustang Creek Tributary 3 West Branch	*1,284
Approximately 850 feet upstream of the confluence of Mustang Creek Tributary 3 West Branch	*1,288
Approximately 1,580 feet upstream of the confluence of Mustang Creek Tributary 3 West Branch	*1,291
Maps available for inspection at the City Hall, 200 North Walker, Suite 302, Oklahoma City, Oklahoma.	
Oklahoma City (city), Oklahoma, Canadian, Cleveland, McClain, and Pottawatomie Counties (FEMA Docket No. 6720)	
Spring Creek of Bluff Creek:	
Approximately 600 feet downstream of NW 122nd Street	*1,099
Upstream side of MacArthur Boulevard	*1,105
Approximately 1,585 feet downstream of Blue Stem Lake Dam	*1,116
Spring Creek West Branch:	
Approximately 200 feet downstream of MacArthur Boulevard	*1,101
Approximately 375 feet upstream of small dam	*1,131
Maps available for inspection at City Hall, 200 North Walker, Suite 302, Oklahoma City, Oklahoma.	
OREGON	
Veneta (city), Lane County (FEMA Docket No. 6720)	
Long Tom River: Approximately 1,250 feet north of the intersection of 7th Street and Dunham Avenue	*385
Maps are available for review at the City Hall, 24951 McCutcheon, Veneta, Oregon.	
PENNSYLVANIA	
Berwick (township), Adams County (FEMA Docket No. 6729)	
Spring Run:	
Approximately 525 feet upstream of corporate limits	*519
Approximately 1,700 feet upstream of corporate limits	*522
Maps available for inspection at the Hanover Evening Sun, 135 Baltimore Road, Hanover, Pennsylvania.	
Hempfield (township), Westmoreland County (FEMA Docket Nos. 6692 and 6720)	
Sewickley Creek:	
Approximately 1,000 feet downstream of Buffalo Creek confluence	*933
Downstream corporate limit of the Borough of New Stanton	*937
Upstream corporate limit of the Borough of New Stanton	*949
Upstream side of Trouttown Road	*954
Upstream side of State Route 819	*965
Upstream corporate limits	*966
Jacks Run:	
Confluence with Sewickley Creek	*951
Downstream side of Depot Street at corporate limits	*952
Upstream side of CONRAIL	*969
Confluence with Slate Creek	*976
Upstream corporate limit of city of Greensburg	*1,002
Confluence of Tributary No. 2	*1,022
Slate Creek:	
Confluence with Jacks Run	*976
Upstream side of Reapler Road	*979
Upstream side of L.R. 64174	*999
Upstream side of Brookdale Drive	*1,021
Upstream side of State Route 130	*1,028
Roadman Lake	*1,056
Upstream side of Luxor Road	*1,088
Approximately 184.8 feet upstream of L.R. 64164	*1,142
Zellers Run:	
Upstream side of Stanton Street	*1,018
Downstream corporate limit of the city of Greensburg	*1,029
Township Line Run:	
Confluence with Sewickley Creek	*966
Approximately 52 feet upstream of 2nd Robert Shaw Acres bridge	*996
Approximately .77 mile upstream of L.R. 64174	*1,070
Belson Run:	
Confluence with Sewickley Creek	*933
Downstream side of CONRAIL culvert	*934
Upstream corporate limit of the Borough of Hunker	*1,007
Downstream corporate limit of the Borough of New Stanton	*1,044
Sandworks Road outside corporate limits approximately 100 feet upstream of Sandworks Road	*1,133
Upstream corporate limits	*1,139
Tributary No. 1 to Jacks Run:	
Confluence with Jacks Run	*977
Upstream side of Hunter Road's first crossing of Tributary No. 1	*983
Tributary No. 2 to Jacks Run:	
Confluence with Jacks to Jacks Run	*1,022
Approximately 1,000 feet upstream of Jacks Run	*1,026
Tributary No. 5 to Jacks Run:	
Approximately 53 feet upstream of U.S. Route 119	*1,013
Downstream side of Terrace View Road	*1,025
Downstream side of State Route 819	*1,063
Maps available for inspection at the Township Building, Greensburg, Pennsylvania.	
TEXAS	
Mesquite (city), Dallas County (FEMA Docket No. 6720)	
Stream 2J2:	
Approximately 3,350 feet upstream of confluence with North Mesquite Creek	*499
Downstream side of Hollow Bend Drive	*500
Downstream side of Americana Lane	*506
Upstream side of Americana Lane	*508
South Mesquite Creek:	
Approximately 1,050 feet downstream of Peachtree Road	*456
Approximately 50 feet downstream of Peachtree Road	*458
Approximately 50 feet upstream of Peachtree Road	*459
Approximately 50 feet downstream of Gross Road	*461
Approximately 700 feet upstream of Gross Road	*462
Approximately 800 feet downstream of South Frontage Road	*465
Approximately 50 feet downstream of South Frontage Road	*466
Approximately 1,370 feet upstream of Pioneer Road	*421
West Fork:	
Approximately 650 feet upstream of confluence with South Mesquite Creek	*461
Approximately 910 feet upstream of confluence with South Mesquite Creek	*461
Stream 2B8: Approximately 310 feet downstream of Interstates 20 and 635	*462
Maps available for inspection at the Engineering Division, 117 North Galloway Avenue, Mesquite, Texas.	
Nueces County (FEMA Docket No. 6729)	
Oso Creek:	
Approximately 11,000 feet upstream of FM 2444	*17
Approximately 1,400 feet upstream of State Route 43	*18
Downstream side of State Route 286	*19
Oso Creek Tributary No. 6: At confluence with Oso Creek	*17

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Maps available for inspection at the County Courthouse, 901 Leopard, Room 103, Nueces, Texas.	
VIRGINIA	
Cedar Bluff (town), Tazewell County (FEMA Docket No. 6729)	
Clinch River:	
Upstream side of Mill Dam	*1,955
Approximately 0.2 mile upstream of Mill Dam	*1,957
Maps available for inspection at the Town Hall, Valley Drive, Cedar Bluff, Virginia.	
WISCONSIN	
Pewaukee (village), Waukesha County (FEMA Docket No. 6720)	
Pewaukee River:	
About 0.42 mile downstream of Wisconsin Avenue	*845
About 0.94 mile upstream of Sussex Road	*853
Maps available for inspection at the City Hall, West 240—North 3065 Pewaukee Road, Pewaukee, Wisconsin.	

Issued: January 16, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-2035 Filed 2-2-87; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1-18; Notice 28]

Federal Motor Vehicle Safety Standards Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA) DOT.

ACTION: Final rule.

SUMMARY: The purpose of this notice is to amend Federal Motor Vehicle Safety Standard No. 101, *Controls and Displays*, to permit greater flexibility in the illumination and identification of controls and displays. The amendments are adopted in response to several petitions for rulemaking.

The amendments allow gauges to have a two-level lighting intensity, rather than being continuously variable over a wide range. They distinguish between critical telltales, such as the turn signal indicators, which must be visible under all lighting conditions, and less critical telltales, such as the water temperature indicator, which are permitted the same range of intensity as gauges. The categorization of certain displays as informational readout displays and the specification of special illumination requirements for those displays is discontinued.

To accommodate new display technologies capable of showing information about different telltales and gauges on a single display screen, the amendments permit the cancellation of messages, but require them to be retrievable by the driver. They also permit messages to be automatically sequenced.

The amendments allow the use of specified words to identify controls and displays, as an alternative to the symbols formerly required for many controls, and permit the use of symbols "substantially similar" to those specified.

DATES: The requirements of S5.3.3(b)(1) and S5.3.3(c)(1) are effective September 1, 1989. All other amendments are effective March 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-5271.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPRM) published on September 12, 1985 (50 FR 37240), NHTSA responded to a number of issues related to Standard No. 101, *Controls and Displays*. These issues had been raised by petitions for rulemaking and by comments on earlier NPRM's. The notice set forth a number of proposed amendments to the lighting intensity and identification requirements of the standard. Upon reviewing the comments on the proposal, the agency has concluded that several of the proposed amendments should be adopted, but that others should not. In the discussion that follows, each amendment appears in the same order as in the NPRM.

Lighting Intensity Requirements

The NPRM dealt with several questions presented by the advent of new display technologies, among them questions about the appropriate lighting intensity for the different types of displays, the grouping of displays with differing intensity requirements into a single cluster, the need to vary lighting intensity according to the outside conditions, and the use of a common space, such as a small TV screen, to display message in sequence.

The standard divides displays into two broad categories: Telltales and gauges. It defines a telltale as a display that indicates, by means of a light-emitting signal, the actuation of a device, existence of a correct or defective condition, or of a failure to function.

Telltales include the turn signal indicators, the high-beam indicator, and the brake failure warning. The standard defines a "gauge" as any display listed in the standard (S5.1 or Table 2) that is not a telltale. Gauges include such displays as the speedometer and the odometer.

As discussed at greater length in the preamble to the NPRM, the current intensity requirements for telltales differ from those for gauges. The lighting for a telltale must be of a single fixed intensity that makes the telltale visible under all daytime and nighttime conditions, while the lighting for a gauge must be continuously variable over a range of intensities.

In an attempt to accommodate new display technologies capable of showing more than one message or symbol on a single screen, the agency amended the standard in 1978 to place those displays into a separate category called informational readout displays (IRD). Although IRD's were required to have two intensity levels—one for daytime and a lower level for nighttime—the fixed intensity of the telltales prevented the manufacturers from including telltales in IRD's.

In response to a petition by General Motors seeking to accommodate telltales in IRD's and a petition by BMW to include telltales among the messages displayed in sequence in a common message center, NHTSA examined the safety implications of changing the lighting intensity requirements for gauges and telltales. In the NPRM, the agency proposed several amendments to these requirements.

A. Lighting Intensity Requirements for Gauges

The NPRM proposed to amend the provisions relating to gauges and IRD's to reduce the number of different sets of lighting requirements and to ensure that drivers are provided with the means for making gauges visible under all lighting conditions. It proposed to amend S5.3.3. to apply the bi-level lighting requirements of IRD's to all gauges, so that the lighting for a gauge and its identification would no longer have to be continuously variable. One lighting level would have to be "barely discernible to a driver who has adapted to dark ambient roadway conditions," continuing that criterion from the current S5.3.3. The intensity could be adjusted either manually or automatically, and could have a level at

which the gauge would not be visible under some lighting conditions. If the brightness level could be automatically adjusted, there would have to be a means to allow the driver to override manually the adjustment to restore visibility. In consequence of proposing to make the lighting requirements for gauges and IRD's identical, the NPRM proposed to delete the term Information Readout Display and the separate IRD light intensity requirement from the standard as no longer useful.

The comments on the proposed amendment to § 5.3.3. focussed on the requirement that a gauge must have at least two levels of brightness (§ 5.3.(b)(1)), and on the requirement that an automatic adjustment have a manual override to allow the driver to restore visibility (§ 5.3.3(c)). General Motors stated that each of these requirements could require a change in hardware that had been developed to meet the IRD criteria. However, there exists general agreement among all commenters (including GM) with the proposal to require that gauges have more than one level of brightness. GM, in its comments, indicates that such a requirement will provide for good visibility of the gauges and also provide the means to prevent glare during darker ambient conditions.

However, GM also commented that when a telltale is incorporated in a cluster of gauges, and the telltale is actuated, the gauges need not be required to be variable in intensity. The agency believes that gauges should always have the capability of being adjusted and will not, for the reasons discussed below, permit the exemption that GM requested.

Although telltales are generally intended to alert the driver to an unsafe or unwanted condition and thus would not normally be illuminated for other than short periods of time, this is not always the case. Many vehicles now incorporate telltales whose nature is more related to providing general information than to denoting an emergency situation. Telltales such as, for example, one indicating the need to service emission equipment may often be illuminated for considerable driving periods. In such instances the agency concludes that the brightness of gauges should be capable of being adjusted.

GM has not presented any compelling evidence to contradict this conclusion. Having a major portion of a gauge cluster illuminated at full brightness for a lengthy time period without manual control would be inconsistent with the general consensus of the commenters, as noted above.

The agency believes that the requirements of the existing standard may be ambiguous in this regard. Because of the possible ambiguity and the need to modify and existing designs which would not comply with the new requirement, the effective date for this section of the proposed amendment (S5.3.3) is September 1, 1989.

A second question presented by GM concerning S5.3.3(b)(1) involves continuously variable lighting. As proposed in the NPRM, S5.3.3(b)(1) would require at least two levels of brightness, one of which would have to be "barely discernible to a driver who has adapted to dark ambient roadway conditions." GM asked whether a means for continuously varying the level of brightness, such as a rheostat, could have a position at which no light is emitted, as permitted by the current S5.3.3. The agency intends no change in the regulation of continuously variable lighting. By requiring "at least" two levels of brightness, S5.3.3(b)(1) implicitly permits the control to have additional levels of brightness, with no restrictions as to whether such levels are above or below the "barely discernible" level.

The remaining question raised by the comments of S5.3.3 concerns the requirement in S5.3.3(c) that if the brightness is automatically adjusted to a level where it is not visible to the driver, a means must be provided to enable the driver to restore visibility. The provision is intended to regulate systems such as those that reduce the brightness of the controls and displays when the headlamps are turned on, regardless of the ambient light conditions. If automatic brightness controls can be developed that employ photosensitive devices to provide adequate visibility under any ambient light conditions, these controls would not be subject to the provision. In proposing this requirement, the agency expressed the view that driving with headlamps on during the daytime was a sufficiently frequent occurrence to necessitate a control to allow the driver to override the effect of the headlamp control.

Notwithstanding objections from General Motors to the effect that there are no field data to indicate a safety problem from the diminished daytime visibility of IRD's, the agency regards the non-visibility of crucial information from displays as a self-evident safety problem. The remedy, a manual override control to increase the displays' brightness, is inexpensive and technically simple. The agency is accordingly adopting S5.3.3(c) as proposed, but with an effective date of September 1, 1989, to permit manufacturers whose displays lack an override to incorporate this feature in an efficient manner.

As proposed in the NPRM, the new S5.3.3 regulates the visibility of controls as well as that of gauges. The comments to the NPRM did not object to this proposal. Finally, the new S5.3.3 eliminates the use of the term "informational readout display." As proposed in the NPRM , the final rule also deletes the definition of that term from S4.

B. Lighting Intensity Requirements for Telltales

As part of the proposal to allow gauges and telltales to be more readily combined in common displays, the NPRM proposed to permit (but not require) most telltales to have the same range of lighting intensity as gauges. Means would have to be provided to make them visible under all conditions, but they could also be adjustable to levels at which they would not be visible under some driving conditions (S5.3.5). The four telltales that were considered to be critical—those for brakes, high beams, turn signals, and seat belts—could also be adjustable, but only to levels at which they would be visible under any driving condition (S5.3.4). The critical telltales would thus have to have a source of illumination separate from that of any telltale or gauge that could be reduced to a level of invisibility.

The comments supported the proposed distinction between critical and non-critical telltales, but several comments objected to classifying the safety belt telltale as a critical telltale. These objections arose mainly from the proposed S5.4, which would have prohibited the inclusion of the critical telltales in a common space, and are discussed in greater detail in the portion of this preamble dealing with that section. Sections S4.5.3.3 and S5.7.3 of Standard No. 208 *Occupant Protection*, require "a continuous or flashing warning light, visible to the driver," if a manual belt is not used or if an automatic belt is disabled. It would be inconsistent with the provisions of Standard No. 208 for Standard No. 101 to permit the safety belt telltale to be reduced in brightness to the point of invisibility. Hence, the safety belt telltale is retained as one of the telltales which may not be adjusted under any conditions to the point of invisibility.

In response to a comment by GM pointing to a potential ambiguity in the drafting of S5.3.4(b) and S5.3.5(b), the final rule makes it clear that the

minimum brightness level permitted for a critical telltale varies according to the ambient light conditions. The key requirement is that at any specific level of ambient light, a critical telltale may not be adjustable to a level that is invisible.

To simplify the standard somewhat, the final rule consolidates the proposed S5.3.4 and S5.3.5 into one section, S5.3.4, and makes additional editorial changes.

C. Other Lighting Intensity Requirements

In the NPRM, the agency proposed a new section S5.3.6 to require a means of varying the light intensity for any passenger compartment illumination within the driver's forward field of view, including illumination "for purposes other than the controls and displays subject to" Standard No. 101. This illumination would have been required to provide at least two levels of brightness. Although the former S5.3.3 required a variable intensity for any illumination that is provided "when and only when the headlights are activated," the proposal would have included other illumination, such as the LED display for a clock, that is controlled by the ignition. The NPRM noted the clocks and other sources of illumination can present the same problems of glare as any of the gauges, and that these sources should be subject to a similar regulation.

This proposal drew a number of comments, most of them adverse. A common view in the comments was that the proposed requirement should not apply to light sources such as glove boxes, vanity mirrors, and under-dash courtesy lights that are rarely, if ever, illuminated while the vehicle is in motion (British Leyland, Chrysler). Many of these light sources were said to be peripheral and of low intensity, so as not to require variable adjustment (GM). Their modification was predicted to entail cost and leadtime problems (GM, Ford). One commenter sought to exclude vehicles which are normally operated with the passenger compartment illuminated (Flxible). The general view was that the existing regulation was adequate.

After considering these comments, NHTSA has decided to adopt a provision closer to that of S5.3.3 as it existed before the issuance of these amendments. The amended provision, now designated as S5.3.3, applies only to those sources of illumination which are capable of being illuminated while the vehicle is in motion, thereby excluding lamps such as courtesy lamps which are actuated by opening the door. It provides that a source of illumination may have either a variable intensity, a single intensity that is barely discernible to a driver whose eyes have adjusted to dark ambient conditions, or a means of being turned off. The manufacturers, may thus choose any of three options for eliminating glare from these sources of illumination. The agency believes that this combination of options meets each of the objections voiced by the comments, while maintaining essential limits on glare. In response to the comment by Flxible, the section does not apply to buses which are normally operated with the passenger compartment illuminated.

D. Multi-Message Displays

Several manufacturers have developed electronic message centers in which more than one telltale may be displayed in a single or common space. The telltales are typically displayed one at a time. Because displaying one telltale cancels any preceding telltale, a means must be provided to ensure that the driver is aware of each actuated telltale. In the NPRM, NHTSA proposed several constraints for these multi-message displays: The critical telltales—brake, high beam, turn signal, and safety belt—were not to be included; a telltale was to be displayed at the onset of its underlying condition; if the conditions for more than one telltale existed, an indication was to be given to the driver; messages were to be retrievable by the driver; messages could be cancelled automatically, subject to the driver's retrieval, but could not be repeated automatically in sequence; and a visible indication of stored messages was to be given the driver.

The proposed S5.4 drew more comments than any other portion of the NPRM, some objecting to the exclusion of the safety belt telltale from a common display (Jaguar, BMW, GM), and most objecting to the prohibition of automatic sequencing (SAAB, Jaguar, Volkswagen, American Motors, Chrysler, BMW, GM, and Ford). Upon further review, the agency concludes that these objections have merit and therefore adopts S5.4 with changes that address the objections.

The safety belt telltale is regulated by Standard No. 208, which specifies separate requirements for manual safety belts and for automatic safety belts. The telltale for a manual belt at the driver's seating position must be actuated for 4–8 seconds after the ignition is turned "on" if the driver's belt is not fastened. This telltale could be incorporated into a multi-message display, as long as it preempts other messages and is visible during the time that Standard No. 208 requires it to be actuated. The telltale for an automatic belt system at the driver's position must meet more stringent requirements. If the belt is unbuckled, if the webbing release mechanism has been actuated, or if the automatic belt positioning motor has not locked the belt into place at the anchorage point, the telltale is required to be continuous or flashing as long as the condition exists.

In view of these distinctions, the agency is limiting the reference to the safety belt telltale in S5.4(a) to a telltale associated with an automatic safety belt. Under Standard No. 208, such a telltale could not be cancellable as long as the safety belt is disabled by one of the three conditions described above. The agency has not proposed to amend Standard No. 208 to permit cancellation, and does not regard a *de facto* amendment through Standard No. 101 to be appropriate.

Upon reexamination of the issue of automatic sequencing, the agency has concluded that automatic sequencing for messages other than the critical telltales has advantages which outweigh the potential drawbacks discussed in the NPRM. The principal advantage is that automatic sequencing eliminates the need for a driver to remember how to retrieve a message in the rare event that two or more telltales are actuated at the same time. Although the NPRM mentioned the possibility that a driver might be distracted by a flashing sequence of messages, there is also a possibility that the driver could be distracted by his attempt to manually retrieve a stored message. On balance, NHTSA has concluded that automatic sequencing should not be prohibited, and is therefore deleting the prohibition from S5.4.4. In doing so, however, the agency cautions that any multi-message display conveying safety information should not be so burdened with non-safety messages as to diminish the value of the display as a safety reminder to the driver.

E. Other Display Requirements

As part of its proposal to eliminate the term "informational readout display," NHTSA proposed to apply the color requirements of S5.3.2 to the displays which would have been classified as IRD's. The agency noted that the use of the specified colors appeared to help drivers understand the meaning and importance of messages, but it invited comments on the difficulty of applying these requirements to electronic displays.

The comments on the color requirements ranged from full support (Robert Schlegel), to a request that they be discontinued for non-critical telltales

(GM), to opposition to any color requirements for telltales (American Motors, Ford). Ford and GM each stated that the single-color displays permitted for IRD's had had no adverse effects on safety. GM noted that prohibiting such displays would inhibit certain new applications such as monochromatic cathode ray tubes (CRT's). Ford offered the example of its message center, which is monochromatic but offers the advantage of displaying a large amount of information in a small space.

On reviewing the value of color requirements vis-a-vis the other available means of enabling the driver to distinguish among various telltales, the agency has concluded that the color requirements should continue to apply to critical telltales, but that they need not apply to other telltales. The physical separation of the critical telltales from the other telltales, and the differing lighting intensity applicable to the critical telltales, have the effect of requiring them to have a separate source of illumination. The retention of the color requirements for these telltales should therefore be compatible with existing designs and should not require any redesign.

In a related action, the agency also proposed to amend the definition of "telltale" to delete the phrase "by means of a light-emitting signal." This proposal would permit the use of new displays, such as liquid crystals, that might have been prohibited by the deleted phrase. It received no adverse comments and the definition is therefore amended for the reasons given in the NPRM.

Identification Requirements

In response to issues raised in three petitions for rulemaking (GM, VW and BL Technology), the NPRM addressed a variety of issues concerning the identification requirements for controls and displays. Although the agency declined to adopt a suggestion by GM that the requirements be removed from the safety standard and placed in a regulation, it proposed amendments to make the requirements more flexible. The first of these was an amendment to permit the use of specified words as an alternate means of identifying controls and displays for which symbols had previously been the exclusive identification. If a manufacturer used the word or symbol specified for a control or display, the NPRM proposed to allow the manufacturer to use additional identification. Finally, the NPRM proposed to permit the use of symbols which substantially resemble those specified in the tables.

There were no objections in the comments to these proposals. Two comments, however, contained requests for the use of specific words and symbols. General Motors requested the use of "Wiper-Washer" as an alternative to "Wipe-Wash," to identify the windshield wiping and washing control, and "R-Def" as an alternative to the phrases proposed to identify the rear defroster control. The agency believes that each of these alternatives would be readily comprehended by the average driver and is accordingly including them in Table I.

Mercedes-Benz requested that three symbols—the ISO symbols for the manual choke, the heater, and air conditioner—be listed in Table I as alternatives to the words now specified for those controls. The agency has previously considered petitions regarding each of these symbols, and has declined to permit their use as alternatives to the specified words. The agency remains convinced that none of the three symbols is intuitively recognizable by the average driver in this country. As stated in the NPRM, the effectiveness of symbols as identifiers has been called into question in recent studies. The agency finds no reason to alter its earlier decision and accordingly declines to permit the use of the symbols requested by Mercedes.

Regulatory Evaluation

The agency has evaluated the economic and other effects of this final rule and determined that they are neither major as defined by Executive Order 12291 nor significant as defined by the Department's Regulatory Policies and Procedures. The agency has determined that the economic effects of this final rule are so minimal that a full regulatory evaluation is not required. Since the amendments relieve restrictions, they conceivably could result in some minor nonquantifiable savings.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the agency has evaluated the effects of this action on small entities. Since the amendments impose no new requirements and do not result in any significant cost impacts, I certifiy that the amendments will not have a significant economic impact on a substantial number of small entities. This conclusion applies to vehicle manufacturers, equipment manufacturers, and small organizations and governmental units that purchase motor vehicles.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that the final rule will not have a significant effect on the quality of the human environemt.

Effective date

In view of the extensive redesign of displays required by S5.3.3(b)(1) and S5.3.3(c)(1), the agency has determined that an effective date of September 1, 1989, for these sections is in the public interest. The other amendments relieve restrictions and the agency has therefore determined that an effective date of 30 days after publication in the **Federal Register** is in the public interest.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.101 [Amended]

1. Section S.4 is amended by removing the sentence defining "informational readout display".

2. Section S.4 is amended by removing the phrase "by means of a light emitting signal" from the definition of "Telltale."

3. The first two sentences of section S5.2.1(a) are revised to read as follows:

(a) Except as specified in S5.2.1(b), any hand-operated control listed in column 1 of Table 1 that has a symbol designated for it in column 3 of that table shall be identified by either the symbol designated in column 3 (or symbol substantially similar in form to that shown in column 3) or the word or abbreviation shown in column 2 of that table. Any such control for which no symbol is shown in Table 1 shall be identified by the word or abbreviation shown in column 2. * * *

4. Section S5.2.3 is revised to read as follows:

S5.2.3 Any display located within the passenger compartment and listed in column 1 of Table 2 that has a symbol designated in column 4 of that table shall be identified by either the symbol designated in column 4 (or symbol substantially similar in form to that shown in column 4) or the word or abbreviation shown in column 3. Additional words or symbols may be used at the manufacturer's discretion for the purpose of clarity. Any telltales used in conjuction with a gauge need not be identified. The identification required or

permitted by this section shall be placed on or adjacent to the display that it identifies. The identification of any display shall, under the conditions of S6, be visible to the driver and appear to the driver perceptually upright.

5. Table 1(a) is amended by adding the words "or washer-wiper" after "wash-wipe" as identifying words for combined windshield washing and wiping systems in column 2, and by amending the indentifying words for rear window defrosting and defogging systems in column 2 to read: "Rear Defrost, Rear Defog, Rear Def, or R-Def".

6. Section S5.3.2 is revised to read as follows:

S5.3.2. Each telltale shall be of the color shown in column 2 of Table 2. The identification of each telltale shall be in a color that contrasts with the background.

7. Table 2 is amended by deleting the colors designated under Column 2 for all telltales other than those for "Turn Signal", "High Beam", and "Malfunction in Anti-Lock or Brake System".

8. Section S5.3.3 is revised to read as follows:

S5.3.3 (a) Means shall be provided for making controls, gauges, and the identification of those items visible to the driver under all driving conditions.

(b) The means for providing the required visibility—

(1) Shall be adjustable, except as provided in S5.3.3(d), to provide at least two levels of brightness, one of which is barely discernible to a driver who has adapted to dark ambient roadway conditions.

(2) May be operable manually or automatically, and

(3) May have levels of brightness at which those items and their identification are not visible.

(c) Effective September 1, 1989, if the level of brightness is adjusted by automatic means to a point where those items or their identification are not visible to the driver, a means shall be provided to enable the driver to restore visibility.

(d) For a vehicle manufacutured before September 1, 1989, the requirements of S5.3.3(b)(1) shall not apply to any gauge during the actuation of a telltale which shares a common light source with the gauge.

9. A new section S5.3.4 is added to read as follows:

S5.3.4 (a) Means shall be provided that are capable of making telltales and their identification visible to the driver under all driving conditions.

(b) The means for providing the required visibility may be adjustable manually or automatically, except that the telltales and identification for brakes, highbeams, turn signals, and safety belts may not be adjustable under any driving condition to a level that is invisible.

10. A new section S5.3.5 is added to read as follows:

S5.3.5 Any source of illumination within the driver's forward field of view which is not used for the controls and displays regulated by this standard, and which is capable of being illuminated while the vehicle is in motion, must have either a variable intensity, a single intensity that is barely discernible to a driver who has adapted to dark ambient roadway conditions, or a means of being turned off. This requirement shall not apply to buses that are normally operated with the passenger compartment illuminated.

11. A new section S5.4 is added to read as follows:

S5.4 A common space may be used to display messages from any sources, subject to the following requirements:

(a) The telltales for the brake, high beam, and turn signal, and the safety belt telltale required by S4.5.3.3 of Standard No. 208 may not be shown on the common space.

(b) Except as provided in S5.4(e), the telltales listed in Table 2 shall be displayed at the initiation of any underlying condition.

(c) When the underlying condition exists for actuation of two or more messages, the messages shall be either—

(1) Repeated automatically in sequence, or

(2) Indicated by visible means and capable of being selected by the driver for viewing.

(d) Messages may be cancellable automatically or by the driver.

(e) The safety belt telltale must be displayed and visible during the time specified in S7.3 of Standard No. 208.

13. Table 2 is amended by placing "7" as an additional superscript for the color of the safety belt telltale and by adding the following as footnote 7:

7. The color of the telltale required by § 4.5.3.3 of Standard No. 208 is red; the color of the telltale required by § 7.3 of Standard No. 208 is not specified.

Issued on January 29, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-2062 Filed 1-29-87; 4:03 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 41276-4176]

Foreign Fishing and Joint Venture Specifications, 1987

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

ACTION: Notice of 1987 foreign fishing and joint venture specifications.

SUMMARY: Fishing regulations require that specifications of optimum yields (OYs), initial estimates of U.S. harvests, and total allowable levels of foreign fishing (TALFFs) be published at the beginning of each fishing year. Specifications for mackerel, squid, and butterfish; the Gulf of Alaska and Bering Sea and Aleutian Islands groundfish; and the Pacific groundfish fisheries have been published earlier. NOAA issues this notice announcing specifications for the remaining foreign fisheries in the U.S. exclusive economic zone (EEZ) which continue without change. Fish species not specified in this notice have no joint venture processing (JVP), reserve, or TALFF available at this time for foreign fishing although they may have incidental catch levels.

EFFECTIVE DATE: January 1, 1987.

ADDRESSES: For current apportionments and incidental catch levels, contact the following Regional Directors.

Mr. Richard Schaefer, Acting Director, Northeast Region, NMFS, 14 Elm Street, Federal Building, Gloucester, MA 01930, 617-281-3600

Mr. Jack T. Brawner, Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, 813-893-3141

Mr. Robert W. McVey, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802, 907-586-7221

Mr. Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115, 206-526-6150

Mr. E. Charles Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731, 213-548-2575.

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon (Regulations Branch Chief, NMFS), 202-673-5315.

SUPPLEMENTARY INFORMATION: The following initial specifications for fisheries in which foreign fishing applications may be received during 1987 have already been published:

(1) Mackerel, squid, and butterfish fisheries on January 7, 1987 (52 FR 537);
(2) Bering Sea and Aleutian Islands groundfish fishery on January 9, 1987 (52 FR 785);
(3) Gulf of Alaska groundfish fishery on January 9, 1987 (52 FR 785);
(4) Pacific Coast groundfish fishery on January 7, 1987 (52 FR 537).

This notice announces initial specifications for the remaining fisheries in which foreign fishing applications may be received during 1987.

1. Northwest Atlantic Ocean Fisheries (Northeast Region)

Foreign fishing regulations for Atlantic hakes; river herring and other finfish; and mackerel, squid, and butterfish appear at §§ 611.50 and 611.51.

The hake and river herring fisheries are managed under preliminary management plans (PMPs) in which the initial annual specifications remain constant from year to year. The initial specifications for hakes were respecified on July 16, 1986 (51 FR 25704).

The mackerel, squid, and butterfish fisheries are managed under one fishery management plan (FMP) at 50 CFR Part 655. Procedures for determining OYs for these species each year are described in § 655.20.

2. Atlantic and Gulf Fisheries (Southeast Region)

Foreign fishing regulations for the Atlantic billfishes and sharks, and the royal red shrimp fisheries appear at §§ 611.61 and 611.62.

The Atlantic billfishes and sharks fishery is managed under a multi-year PMP in which the specifications for sharks remain constant from year to year; billfishes are prohibited species for foreign fishing.

The royal red shrimp fishery is managed under the FMP for the shrimp fishery of the Gulf of Mexico, at 50 CFR Part 658. The TALFF established in the FMP and its implementing regulations (46 FR 27489, May 20, 1981) for this species has continued without change from year to year.

3. Alaska Fisheries (Alaska Region)

Foreign fishing regulations for the groundfish fisheries off Alaska appear at §§ 611.90, 611.92, and 611.93

The snail fishery in the Bering Sea is managed under a multi-year PMP, at § 611.94, in which the specifications remain constant from year to year.

4. Northeast Pacific Ocean Fisheries (Northwest Region)

Foreign fishing regulations for Pacific Coast groundfish appear at § 611.70.

5. Western Pacific Ocean Fisheries (Southwest Region)

Foreign fishing regulations for these fisheries appear at §§ 611.80 and 611.81. These fisheries are managed under multi-year PMPs in which the specifications remain constant from year to year.

INITIAL (AS OF JANUARY 1, 1987) OPTIMUM YIELD (OY), TARGET QUOTA (TQ), OR TOTAL ALLOWABLE CATCH (TAC), ESTIMATED DOMESTIC ANNUAL HARVEST (DAH), ESTIMATED DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS.

Species	Species code	Areas	OY	DAH	DAP	JVP	Reserve	TALFF
1. Northeast Region								
Northwest Atlantic Ocean Fisheries:								
A. Hake fishery:								
		(Source: 51 FR 3788, January 30, 1986; 51 FR 25704, July 16, 1986)						
Hake, silver	104	NW Atlantic I–IV [1]	30,000	20,600	5,600	15,000	0	9,400
		NW Atlantic V	13,000	9,000	2,000	7,000	0	4,000
Hake, red	105	NW Atlantic I–IV	16,000	8,000	5,000	3,000	3,000	3,000
		NW Atlantic V	6,000	3,500	500	3,000	0	2,500
B. Trawl fishery:								
		(Source: 51 FR 3788, January 30, 1986)						
Herring, river	309		8,000	7,800	7,900	0	0	200
Other finfish	499		247,000	200,200	180,000	20,200	0	46,800
2. Southeast Region								
Atlantic and Gulf Fisheries:								
A. Atlantic billfishes and sharks fishery:								
		(Source: 48 FR 3371, January 25, 1983)						
Sharks	469		6,150	5,,000			0	1,150
B. Shrimp fishery of the Gulf of Mexico:								
		(Source: 46 FR 27489, May 20, 1981)						
Royal red shrimp	630		177.8	111.6			0	66.2
3. Alaska Region								
Alaska Fisheries:								
Snail fishery:								
		(Source: 46 FR 1738, January 7, 1981)						
Snails (meats)	673	Area-wide	3,000	0	0	0	0	3,000

INITIAL (AS OF JANUARY 1, 1987) OPTIMUM YIELD (OY), TARGET QUOTA (TQ), OR TOTAL ALLOWABLE CATCH (TAC), ESTIMATED DOMESTIC ANNUAL HARVEST (DAH), ESTIMATED DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS.—Continued

Species	Species code	Areas	OY	DAH	DAP	JVP	Reserve	TALFF
4. Southwest Region								
Western Pacific Ocean Fisheries:								
Pacific Billfish and Sharks Fishery:								
		(Source: 46 FR 1738, January 7, 1981)						
Swordfish	264	U.S. West Coast	318.4	[2] 350.2			0	0
		Hawaii & Midway	93.6	5.9			8.8	78.9
		Guam & N. Marianas	4.1	0.2			0.4	3.5
		American Samoa	2.4	0			0	2.4
		U.S. Possessions	28.1	0			0	28.1
Blue marlin	260	Hawaii & Midway	612.0	603.4			8.6	0
		Guam & N. Marianas	26.9	3.0			23.9	0
		American Samoa	37.2	2.3			0	34.9
		U.S. Possessions	76.3	0			0	76.3
Black marlin	253	Hawaii & Midway	97.7	[2] 104.7			0	0
		Guam & N. Marianas	0.6	0			0.1	0.5
		American Samoa	5.3	0			0	5.3
		U.S. Possessions	6.2	0			0	6.2
Striped marlin	261	U.S. West Coast	43.2	[2] 47.5			0	0
		Hawaii & Midway	223.2	67.9			15.5	139.8
		Guam & N. Marianas	5.0	0.3			0.5	4.2
		American Samoa	7.8	0			0	7.8
		U.S. Possessions	46.6	0			0	46.6
Spearfish	262	Hawaii & Midway	42.7	23.4			1.9	17.4
		Guam & N. Marianas	4.8	0.2			0.5	4.1
		American Samoa	3.5	1.3			0	2.2
		U.S. Possessions	14.3	0			0	14.3
Sharks	469	U.S. West Coast	27.6	[2] 30.4			0	0
		Hawaii & Midway	1,111.6	0			111.1	1,000.5
		Guam & N. Marianas	31.9	0			0	31.9
		American Samoa	101.6	0			0	101.6
		U.S. Possessions	651.4	0			0	651.4
Wahoo	255	Hawaii & Midway	288.9	[2] 317.8				0
		Guam & N. Marianas	25.1	27.6				0
		American Samoa	4.8	2.8				2.0
Mahimahi	238	Hawaii & Midway	105.0	[2] 115.5			0	0
		Guam & N. Marianas	18.9	[2] 20.8			0	0
		American Samoa	6.4	4.4			0	2.0
		U.S. Possessions						

Footnotes:
[1] *Northwest Atlantic* means the trawling areas shown in § 611.50, Figure 1, Numbered I to V from south to north.
[2] Estimated DAH exceeds OY for this fishery.

This notice is issued under 50 CFR Part 611 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 29, 1987.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-2145 Filed 2-2-87; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 651

[Docket No. 60599-6141]

Northeast Multispecies Fishery; Correction

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

ACTION: Interim rule; correction.

SUMMARY: This document corrects a mistake in the regulatory text of the interim rule for the Northeast Multispecies Fishery which was published August 20, 1986, 51 FR 29642. The correction involves coordinates for the boundaries of an area closed to fishing during the months of February through May.

FOR FURTHER INFORMATION CONTACT: Elizabeth D. Haynes, Fishery Management Specialist, 202-673-5319.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-18815 in the issues of August 20, 1986, beginning on page 29642 make the following correction:

§ 651.21 [Corrected]

On page 29649, in the table in § 651.21(a)(2), the latitude of point g "41°51.9' N." should read "41°59.1' N.".

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

Dated: January 29, 1987.

William E. Evans,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87-2144 Filed 1-29-87; 5:08 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 22
Tuesday, February 3, 1987

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 735

Non-Public (Confidential) Financial Disclosure

AGENCY: Office of Personel Management.

ACTION: Proposed regulations; extension of comment period.

SUMMARY: The Office of Government Ethics proposed regulations to establish a system of non-public (confidential) financial reporting for certain officers and employees of the executive branch. These proposed regulations were published in **Federal Register** on December 2, 1986, at 51 FR 43359. Because of the holiday period and the recent weather related closings, the Office of Government Ethics received a number of requests that the comment period be extended. This regulation extends the comment period to March 2, 1987, instead of February 2, 1987.

DATE: Comments must be received on or before March 2, 1987.

ADDRESS: Office of Government Ethics, P.O. Box 14108, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Jane Ley or Nancy Janes, (202) 632-0569.

Lists of Subjects in 5 CFR Part 735

Conflicts of interest, Financial disclosure, Government employees.

Office of Government Ethics.

David H. Martin,

Director, Office of Government Ethics.

[FR Doc. 87-2047 Filed 2-2-87; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1011

[Docket No. AO-251-A32]

Milk in the Tennessee Valley Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals by a cooperative association and a dairy processor to amend the Tennessee Valley Federal marketing order. One proposal would modify the plant definition to permit a reloading operation to take place at a facility with permanent storage tanks. The pool distributing plant qualifications would be revised to permit unit pooling of two or more plants.

DATE: The hearing will convent at 9:30 a.m., local time, on February 12, 1987.

ADDRESS: The hearing will be held at the Hyatt Regency Hotel, 500 Hill Avenue, SE, Knoxville, Tennessee 37901 (615/637-1234).

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Hyatt Regency Hotel, 500 Hill Avenue, SE, Knoxville, Tennessee 37901 (615/637-1234), beginning at 9:30 a.m., on February 12, 1987, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Tennessee Valley marketing area.

The hearing is called pursuant to the provisons of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and information impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1011

Milk marketing orders, Milk, Dairy products.

The authority citation for Part 1011 continues to read as follows:

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

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Dairymen, Inc.

Proposal No. 1

Revise § 1011.7 of the order, pool plant definition, by adding the following proviso to paragraph (a)(2):

Provided, That two or more plants operated by the same handler may be considered as a unit for the purpose of

meeting the total Class I requirements of this paragraph if such handler requires that the plants be so considered and each plant in the unit meets the in-area route disposition requirements specified in paragraph (a)(1) of this section.

Proposed by Kraft, Inc.

Proposal No. 2

Revise § 1011.4 to read as follows:

§ 1011.4 Plant.

"Plant" means the land, buildings, facilities and equipment constituting a single operating unit or establishment at which milk products (including filled milk) are received, processed or packaged. Separate facilities without stationary storage tanks which are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition: *Provided,* That a facility with stationary storage tanks, located in an area that includes the marketing area plus the area within 100 miles of the marketing area boundary, which is used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 3

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of the Tennessee Valley marketing area, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Tennessee Valley Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: January 29, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87-2138 Filed 2-2-87; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 871 0011]

Alleghany Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment: Agreement Containing Consent Order To Cease and Desist

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would allow, among other things, a New York City title insurance company to acquire Safeco Title Insurance Co. by requiring respondent to divest two title plants to alleviate concerns that the acquisition could reduce competition in the production and sale of title information in Cook County, Ill. and Los Angeles County, Calif.

DATE: Comments will be received until April 6, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/A-2308, Michael E. Antalics, Washington, DC 20580 (202) 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with the accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Title insurance, Trade practices.

Agreement Containing Consent Order To Cease and Desist

In the matter of Alleghany Corp., a corporation.

The Federal Trade Commission having initiated an investigation into the proposed acquisition of Safeco Title Insurance Company, a subsidiary of Safeco Corporation, by Chicago Title & Trust Company, a subsidiary of Alleghany Corporation, and it now appearing that Alleghany Corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to divest certain assets;

It Is Hereby Agreed by and between Alleghany Corporation, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Alleghany Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office at Park Avenue Plaza, New York, New York, 10055.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint here attached, will be placed on the public record for a period of sixty days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent

that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest certain assets in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the Order shall have the same force and effect, and may be altered, modified or set aside in the same manner and within the same time, provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It Is Hereby Ordered that as used in this Order the following definition shall apply:

A. "Alleghany" means Alleghany Corporation, its subsidiaries, divisions, groups and affiliates controlled by Alleghany, and their respective directors, officers, employees and representatives, and their respectives, and their respective successors and assigns.

B. "Safeco" means Safeco Corporation, its subsidiaries, divisions, groups and affiliates controlled by Safeco, and their respective directors, officers, employees and representatives, and their respective successors and assigns.

C. "Title plant" means a privately owned set of records regarding the ownership of and interests in real property that is maintained by obtaining information from the public records on a daily or regular basis, and is indexed, posted or otherwise organized to update data regarding specific land parcels.

D. "TRI Plant" means the title plant located in Los Angeles County, California, in which Alleghany maintains and ownership interest.

II

It Is Further Ordered that Alleghany shall divest or shall cause to be divested, absolutely and in good faith, all of its right, title and interest in the properties described in Paragraphs IIA and IIB. Divestiture shall be made within the times specified in Paragraphs IIA and IIB, and shall be made only to a buyer or buyers and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable title plants engaged in the production and sale of title plant information, and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint in this matter.

A. Safeco's title plant in Cook County and all user or access agreements with the plant shall be divested within twelve months from the date this Order becomes final. Computer and other services provided for the plant by Safeco from Safeco's other facilities, at the buyer's option at the time of purchase, will continue to be provided by Alleghany at a commercially reasonable price, for a period of up to three years from the date this Order becomes final and, at the buyer's option, Alleghany will assist the buyer in transferring the computer services to any other provider of such services.

B. Either Safeco's title plant in Los Angeles County or Alleghany's interest in the TRI plant in Los Angeles County shall be divested within fourteen months from the date this Order becomes final. Alternatively, Alleghany shall abandon its interest in the TRI plant within the same 14 month period. If the Safeco title plant is divested, all user or access agreements with the Safeco plant shall also be divested. If the Safeco title plant in Los Angeles County is divested, computer and other services provided for the plant by Safeco, at the buyer's option at the time of purchase will continue to be provided by Alleghany at a commercially reasonable price for a period of up to three years from the date this Order becomes final and, at the buyer's option, Alleghany will assist the buyer in transferring the computer services to any other provider of such services.

III

It Is Further Ordered That:

A. If Alleghany has not divested the Safeco Cook County title plant within the twelve month period, Alleghany shall consent to the appointment of a trustee by the Commission pursuant to the Order. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by Alleghany to comply with Paragraphs IIB through XI of this Order.

B. If a trustee is appointed by the Commission pursuant to Paragraph IIIA of the Order, Alleghany shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to Alleghany's consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have six months from the date of appointment to submit for prior approval of the Commission the divestiture of the Safeco Cook County title plant.

3. If, at the end of the six month period, the trustee has not submitted for prior approval of the Commission a divestiture of the Safeco Cook County title plant, the trustee shall have an additional twelve month period in which to submit for prior approval of the Commission a divestiture of either the Safeco Cook County title plant or a copy of Alleghany's own computerized Cook County title plant.

4. If the trustee chooses to sell a copy of Alleghany's computerized Cook County title plant pursuant to Paragraph IIIB3, the sale shall include copies of all of the computer tapes and other information used by Alleghany in its operation of the computerized title plant, with the exception of the computer hardware, updated in the future on a daily basis until such time as the buyer(s) has established a separate title plant including that information and has, in full operation, the personnel needed to continue updating the plant information without Alleghany's assistance.

5. If at the end of the trustee's twelve month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a

reasonable time, the divestiture period may be extended by the Commission.

6. The trustee shall have full and complete access to the personnel, books, records, and facilities relating to any undivested assets and Alleghany shall develop such financial or other information relevant to the assets to be divested as such trustee may reasonably request. Alleghany shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

7. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with the Order's absolute and unconditional obligation to divest and the Commission's intention to ensure that a viable, going concern will be divested, but there shall be no minimum price.

8. The trustee shall serve at the cost and expense of Alleghany on such reasonable and customary terms and conditions as the Commission may set. The trustee shall account for all monies derived from asset sales and all expenses incurred. After approval by the Commission of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Chicago Title & Trust Company and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement (percentage of price) that is contingent on the trustee causing the divestiture of the assets and that shall provide an incentive for the trustee to divest the assets as soon as possible.

9. Promptly upon appointment of the trustee, Alleghany shall, subject to the Commission's prior approval and consistent with provisions of this Order, execute a trust agreement that transfers to the trustee all rights and power necessary to permit the trustee to cause divestiture of undivested assets.

10. If the trustee ceases to act or fails to act diligently, the Commission may, on its own or by request of Alleghany, appoint a substitute trustee for the balance of the time periods specified in Paragraphs IIIB2 and IIIB3, or any extensions thereof.

11. The trustee shall report in writing to Alleghany and the Commission every thirty days concerning the trustee's efforts to accomplish divestiture.

12. The trustee shall be authorized to retain independent legal counsel and other persons for purposes of discharging the functions set forth above. Alleghany shall reimburse the trustee for the reasonable value of all expenses so incurred.

13. If Alleghany and the trustee are unable to resolve a dispute regarding the reasonable value of his/her services or the reasonableness of an expenditure or obligation incurred by the trustee in connection with his/her efforts to divest the assets, then Alleghany and the trustee shall submit the dispute to the Commission for resolution, but the time periods shall continue to run. The trust agreement shall recite that the Commission's determination of the reasonable value of the trustee's services or the reasonableness of expenditures and other obligations incurred by the trustee shall be binding upon Alleghany and the trustee.

IV

It is further ordered that Alleghany shall not cause or permit the wasting or deterioration of the assets and operations to be divested in accordance with Paragraphs IIA and B of this Order in any manner that impairs the marketability of any such assets and operations or impairs in any manner the viability of the assets and operations as a going concern engaged in the production and sale of title plant information. In this regard:

A. Alleghany shall maintain the Safeco Cook County title plant and Safeco Los Angeles County title plant to the extent and in the manner maintained by Safeco prior to this acquisition, including but not limited to updating the records contained in the plants on a daily or regular basis such that the plants are as current as possible at all times.

B. Alleghany shall maintain in good faith all contracts for access to the Safeco Cook County title plant and Safeco Los Angeles County title plant subject to the terms, conditions and stipulations of those contracts, and will refrain from taking any action toward terminating those contracts other than that which would be commercially reasonable to Safeco under the terms of those agreements.

V

It is further ordered that for a period of ten years from the date this Order becomes final, Alleghany shall not, directly or indirectly, acquire any stock, share capital, or equity interest in any concern corporate or non-corporate, that in turn has any direct or indirect ownership interest in a title plant that services either Cook County, Illinois, or Los Angeles County, California, or acquire from any concern, corporate or non-corporate, any assets (other than in the ordinary course of business) of, or ownership interest in, an existing title plant that services either Cook County, Illinois or Los Angeles County California, without the prior approval of the Federal Trade Commission.

VI

It is further ordered that for a period of ten years from the date this Order becomes final, Alleghany shall not, directly or indirectly, acquire any stock, share capital, or equity interest in any concern, corporate or non-corporate, that in turn has any direct or indirect ownership interest in a title plant servicing any geographic area for which Alleghany at that time has any direct or indirect ownership interest in a title plant servicing the same area, or acquire from any concern, corporate or non-corporate, any assets (other than in the ordinary course of business) of, or ownership interest in, any existing title plant servicing any geographic area for which Alleghany at that time has any direct or indirect ownership interest in a title plant servicing the same area, without providing advance written notification to the Federal Trade Commission. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"). Alleghany shall provide the Notification to the Federal Trade Commission at least thirty days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"). Alleghany shall provide to the Commission supplemental information either in Alleghany's possession or reasonably available to Alleghany. Such supplemental information shall include a copy of the proposed acquisition agreement; the names of the principal representative of Alleghany and of the firm Alleghany desires to acquire who negotiated the acquisition agreement, any management or strategic plans discussing the proposed acquisition, and all documents relating to competition for the provision of title plant services in that particular county. If, within the first waiting period, representatives of the Federal Trade Commission make a written request for additional information, Alleghany shall not consummate the acquisition until twenty days after submitting such additional information. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. Section 18A).

VII

It is further ordered that acquisitions resulting in an ownership interest of not more than 10% of publicly traded companies, solely for the purpose of investment, are not subject to the requirements of Paragraphs V and VI of this Order, except that acquisitions resulting in an ownership interest of more than 5% of publicly traded companies, even if solely for the purpose of investment, are subject to the requirements of Paragraphs V and VI of this Order if such companies, directly or indirectly, have an ownership interest of 5% or more in Ticor Title Insurance Company, Lawyers Title Insurance Corporation, First American Title Insurance Company, Commonwealth Land Title Insurance Company, Transamerica Title Insurance Company, Stewart Title Guaranty Company, Minnesota Title Insurance Company, or TRW, Inc. or any of their successors or assigns.

VIII

It is further ordered that Alleghany shall notify the Commission at least thirty days prior to any change in Alleghany such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

IX

It is further ordered That:

A. Within thirty days after the Order becomes final, and every thirty days thereafter until Alleghany has fully complied with Paragraph II of this Order, Alleghany shall file with the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this Order. Such compliance reports shall include, in addition to any other information that the staff of the Federal Trade Commission may reasonably request, a summary of all contacts and negotiations with potential purchasers of the stock, assets, or other rights or interests to be divested under this Order, the identity and address of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

B. Within one year after the Order becomes final, and annually for the next nine years, Alleghany shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this Order.

Analysis To Aid Public Comment On Proposed Consent Order

The Federal Trade Commission has accepted for public comment from Alleghany Corporation an agreement containing consent order. This agreement has been placed on the public record for sixty (60) days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission investigation in this matter concerned the proposed acquisition by a subsidiary of Alleghany Corporation of Safeco Title Insurance Company, a wholly-owned subsidiary of Safeco Corporation. Notifications of the proposed acquisition were filed pursuant to the Hart-Scott-Rodino Act in November 1986.

Both Safeco Title and Alleghany, through its subsidiary, Chicago Title and Trust Company, are engaged in the sale of title insurance and related services nationwide. In particular, each company owns, in various counties throughout the nation, title plants. A title plant is a privately owned set of records regarding the ownership of and interests in real property.

The complaint alleges that there likely would be anticompetitive effects from the acquisition in the production and sale of title plant information in Cook County, Illinois and Los Angeles County, California, and that the acquisition therefore would violate section 7 of the Clayton Act. The complaint also charges that the acquisition agreement would violate section 5 of the Federal Trade Commission Act.

The order accepted for public comment contains provisions requiring divestiture of certain assets. Within 12 months of the order's effective date, Alleghany must divest its entire interest in the Safeco title plant in Cook County, Illinois along with all its access agreements with third parties. If that plant has not been divested within that period, the Commission would be able to appoint a trustee to complete the divestiture. If after six months the trustee is unable to complete the divestiture, then the trustee will have the option of divesting either the Safeco Cook County plant, or a copy of Alleghany's own computerized Cook County plant. All divestitures would be subject to the approval of the Federal Trade Commission.

The order also requires Alleghany to divest within 14 months the Safeco Los Angeles plant or Alleghany's interest in a jointly-owned plant in Los Angeles called Title Records, Inc. ("TRI"). Alternatively, Alleghany must abandon its interest in the TRI plant if it is unable to divest or chooses not to divest the Safeco plant or its share of the TRI plant.

The order also requires Alleghany to take measures to prevent the wasting of the assets to be divested, in order to maintain their competitive vitality.

For a period of ten (10) years from its effective date, the order would also prohibit Alleghany from acquiring an ownership interest in a title plant in either Cook County or Los Angeles County without the prior approval of the Commission. For the same period, Alleghany would be required to give prior notification to the Commission of any acquisition of an ownership interest in a title plant serving the same county as a plant already owned by Alleghany. There is an exception for acquisitions up to 10% of the shares of a corporation if made solely for the purpose of investment. An exception to this exception is where purchase is made of more than 5% of the stock of a company which itself owns more than 5% of any of several named competitors in the sale of title insurance. In such case prior notification or approval would be required.

It is anticipated that the provisions of the order would resolve the competitive concerns alleged in the complaint. In Cook County, Alleghany and Safeco owned the only title plants serving the area, comprising greater metropolitan Chicago. The acquisition, absent the proposed relief, would give Alleghany a monopoly over title plant information there. The divestiture contemplanted by the order would provide for the existence of a viable competitor to Alleghany in that market.

In Los Angeles, the competitive concern is that the acquisition would increase the likelihood of collusion in the provision of title plant information by virtue of Alleghany's ownership interest in two of the three title plants serving that county. The divestiture contemplated by the order for Los Angeles would leave Alleghany with an ownership interest in only one of the plants, alleviating the dual ownership problem and its possible adverse impact on competition.

The purpose of this analysis is to invite public comment. This analysis is not intended to constitute an official

interpretation of the agreement and order or to modify its terms in any way.

Emily H. Rock,

Secretary.

[FR Doc. 87-2114 Filed 2-2-87; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-43-86]

Interest Charge; Domestic International Sales Corporation (DISCs)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the taxation of income allocable to a Domestic International Sales Corporation (DISC) for taxable years beginning after 1984. Changes to the applicable tax law were made by the Tax Reform Act of 1984 and the Technical Corrections Title of the Tax Reform Act of 1986. The proposed regulations would provide DISCs and DISC shareholders with guidance needed to comply with the Act and would affect all DISCs and DISC shareholders.

DATES: Written comments and requests for a public hearing must be delivered or mailed by April 6, 1987. The regulations are proposed to be effective for transactions after December 31, 1984, and taxable years ending after December 31, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attn: CC:LR:T (Intl-43-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Joseph M. Rosenthal of the Office of the Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attn: CC:LR:T). Telephone 202-566-6276 (not a toll-free call.)

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 441, 991, 992, 995, 996 and 6011 of the Internal Revenue Code of 1954. These amendments are proposed to provide regulations under sections 441(h), 995(b)(1)(E), 995(f) and 996 which were added to the Code by sections 803 and 802 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 672) or amended by the Technical Corrections Title of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085).

Explanation of the Proposed Regulations

Termination of DISC Election and Exemption of DISC Income From Tax

Under section 805(b) of the Tax Reform Act of 1984, the last taxable year of each DISC which began before January 1, 1985, ended on December 31, 1984. The termination of a DISC's taxable year on that date is treated under § 1.921-1T(a) as a revocation of the corporation's DISC election. All corporations which wish to be treated as a DISC for any period after 1984 must make a new DISC election of Form 4876A. Regulations providing for the time and manner of making the new DISC election were provided by § 1.921-1T(b)(1) Q&A-1. Those regulations generally require that the election of a corporation to be treated as an interest charge DISC for the corporation's first taxable year beginning after December 31, 1984, must be filed on Form 4876A within 90 days after the beginning of such year. The Service has learned that many corporations which were DISCs on December 31, 1984, and which intended to continue to be treated as an interest charge DISC may have failed to re-elect DISC status in a timely manner. Accordingly, section 1.992-2(a)(3) of these proposed regulations extends the time for re-electing DISC status for 1985 and subsequent taxable years for corporations which were treated as a DISC for the taxable year ending December 31, 1984, to June 4, 1987. Forms 4876A filed by such corporations within this time will be accepted by the Service as a timely DISC election for the DISC's taxable year beginning January 1, 1985, based on these proposed regulations.

In addition, under section 805(b) of the Tax Reform Act of 1984, generally all corporations which qualified as DISCs on December 31, 1984, are permitted to treat their accumulated DISC income as previously taxed income when distributed after that date. Temporary regulations relating to the treatment of such distributions were provided by § 1.921-1T and are contained in § 1.996-9 of the proposed regulations. That section of the proposed regulations also provides that any net operating loss or capital loss carryforward of a DISC as of December 31, 1984, is to be reduced by the amount of accumulated DISC income that was exempted from tax. In addition, that section also provides that no foreign tax credit shall be allowed with respect to any foreign taxes paid with respect to the amount of accumulated DISC income that was exempted from tax.

New DISC Rules

The Tax Reform Act of 1984 also changed many of the rules applicable to DISCs effective for taxable years ending after 1984.

Taxable year of the DISC

A DISC is required to use the same taxable year as its principal shareholders. The same rule also applies to Foreign Sales Corporations (FSCs) and to small FSCs. Section 1.441-1(h) of the proposed regulations provides rules relating to this requirement. The DISC must change its taxable year if the principal shareholder changes its taxable year, or if a different shareholder having a different taxable year becomes the principal shareholder of the DISC. If the DISC must change its taxable year to conform to the taxable year of a new principal shareholder, § 1.441-1(h)(3)(iii) of the proposed regulations provides that the short period required to effect the change shall end with the close of the new principal shareholder's taxable year within which the change in ownership occurs. This provision would amend the rule for determining the short period contained in § 1.921-1T(b)(6) of the Temporary Regulations (under which the short period is the taxable year of the DISC following the DISC's taxable year in which the change of ownership occurs), and is proposed to be effective for changes in ownership occurring after 30 days the date the proposed regulations are finalized.

Controlled groups

A DISC and a FSC or a small FSC cannot be members of the same greater-than-50-percent controlled group. Rules relating to this requirement are contained in § 1.992-1(j) of the proposed regulations. In general, the DISC election of a corporation is treated as revoked if a FSC or a small FSC election becomes effective for any other member of the controlled group. A special transitional rule is provided if a DISC and a FSC or a small FSC become members of the same controlled group by reason of an acquisition of a shareholder in either the DISC, the FSC or the small FSC.

Deemed distributions

The deemed distribution relating to base period export gross receipts (the incremental rule) is eliminated for taxable years beginning after 1984, and is replaced with a deemed distribution of the DISC's taxable income

attributable to qualified export receipts that exceed $10 million. Section 1.995–8 of the proposed regulations provides rules relating to this new deemed distribution. In general, the $10 million amount may be allocated to qualified gross receipts on a transaction-by-transaction basis. Section 1.995–8(b)(2) of the proposed regulations provides a special rule for the allocation of qualified gross receipts attributable to related and subsidiary services. Section 1.995–8(f) of the proposed regulations provides a method for allocating the $10 million amount among DISCs which are members of the same controlled group. Under § 1.995–8(a), the $10 million amount is to be prorated on a daily basis in the case of a DISC having a short taxable year.

The deemed distribution of 50 percent of the DISC's taxable income of a non-C corporation DISC shareholder is eliminated, and the deemed distribution of 57.5 percent of the DISC's taxable income to a C corporation DISC shareholder is reduced to a deemed distribution of 1/17th of the amount of the DISC's taxable income for the taxable year in excess of the other deemed distributions. See § 1.995–2A of the proposed regulations.

Interest Charge

In general

The Tax Reform Act of 1984 also provides for an annual interest charge on the shareholders of the DISC. Section 1.995(f)–1 of the proposed regulations provides rules relating to this requirement. In general, the amount of the interest charge is based on the additional income tax that would otherwise be due on the accumulated DISC income deferred by the DISC in taxable years beginning after 1984 computed as if the deferred income were distributed to the shareholder. The rate of interest charged is tied to the rate of interest on 52-week Treasury bills (the "base period T-bill rate"), as described below. The interest charge is not imposed on the accumulated DISC income for the taxable year in which it is earned. Thus, a DISC shareholder will not have an interest charge for the shareholder's taxable year ending with or including the last day of the DISC's first taxable year for which its new DISC election is made. Section 1.995(f)–1(f) contains rules for determining the amount of the deferred DISC income.

DISC-related deferred tax liability

The tax that would otherwise be due on the deferred DISC income, the "shareholder's DISC-related deferred tax liability", for a taxable year of the shareholder is the excess of the shareholder's tax liability computed as if the deferred DISC income were included in the shareholder's gross income over the shareholder's actual tax liability for the taxable year. Sections 1.995(f)–1 (d) and (e) of the proposed regulations provide rules relating to this computation. Under section 995(f)(2), the computation is to be made without regard to carrybacks to the taxable year from a later taxable year. Under § 1.995(f)–1(d) (4) of the proposed regulations, the computation is also to be made without regard to carryforwards to the taxable year or to any other item that may be carried by the shareholder to another taxable year. Thus, the treatment of carrybacks and carryovers of deductions and credits in the computation of the amount of the shareholder's DISC-related deferred tax liability is similar to the treatment of such items under section 644(a) of the Code. Section 644(a) provides a special rule for determining the tax imposed on a trust's gain on the sale of property contributed to the trust within two years by reference to the additional tax that would have been imposed on the grantor if the property had been sold by the grantor.

Base period T-bill rate

The rate of interest charged on the shareholder's DISC-related deferred tax liability for a taxable year is equal to the "base period T-bill rate." This rate is equivalent to the average investment yield on 52 week T-bills auctioned during the one-year period ending on September 30 of the calendar year ending with or within the taxable year of the shareholder. The base period T-bill rate, as determined above, is then compounded daily for the number of days in the shareholder's taxable year for which the interest charge is being determined. Under section 6622, the amount of any interest required to be paid under the Code is determined by daily compounding.

The base period T-bill rate for each one-year period ending September 30 shall be published in a revenue ruling in the Internal Revenue Bulletin. That revenue ruling shall also contain a table of factors reflecting daily compounding of the base period T-bill rate. Revenue Ruling 86–132, 1986–46 I.R.B. 5 published the base period T-bill rates for the periods September 30, 1984, 1985 and 1986, together with tables of factors reflecting daily compounding.

To compute the amount of the interest charge for the shareholder's taxable year, the shareholder shall multiply the DISC-related deferred tax liability by the base period T-bill rate factor corresponding to the number of days in the shareholder's taxable year for which the interest charge is being determined. Generally, the shareholder will use the base period T–bill rate factor for a 365 day year. The factor to be used will be other than the factor for 365 days if the shareholder's taxable year is a short taxable year, if the shareholder uses the 52–53 week taxable, year, or if the shareholder's taxable year is a leap year.

Paragraph (g) of § 1.995(f)–1 of the proposed regulations provides fuels for determining the amount of the interest charge for a taxable year in which stock in the DISC is transferred. In general, the transferor and the transferee shareholders compute their DISC-related deferred tax liability as if they each held the stock for the entire taxable year and then multiply that amount by the base period T-bill rate factor for the number of days in the year that each shareholder held the stock. A reduction in the amount of deferred DISC income (and thus of the interest charge) is made for any gain recognized on the transfer under section 995(c).

Section 1.995(f)-1(h) of the proposed regulations provides for pass-through treatment of the interest charge in the case of DISC stock held by a partnership or an S corporation. If stock in a DISC is held by an estate or trust, however, the interest charge is imposed on the estate or trust.

Payment, collection and assessment of the interest charge

Section 995(f) (6) provides that the amount of the interest charge for a taxable year is treated as interest imposed on an underpayment of tax under section 6601. Thus, the interest charge may be deducted by the DISC shareholder only to the extent that the shareholder may deduct interest on an underpayment of tax. The interest charge is due at the same time the shareholder's income tax return for the taxable year is required to be filed, without regard to extensions. No payments of estimated tax under sections 6154 or 6654 are required with respect to the interest charge.

The interest charge is to be computed on Form 8404. To assist the IRS in properly processing the shareholder's the Form 8404 and crediting the payment to the shareholder's account, the Form 8404, together with the shareholder's payment of the interest charge, is *not* to be included with or attached to the shareholder's income tax return for the taxable year.

Technical corrections

The Technical Corrections Title of the Tax Reform Act of 1986 made several amendments to the DISC and FSC rules. The proposed regulations incorporate those amendments, but do not address any issues that may be raised by other substantive provisions of the Tax Reform Act of 1986.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has determined that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. § 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments to these requirements to the OMB also send copies of those comments to the IRS.

Drafting Information

The principal author of the proposed regulations is Joseph M. Rosenthal of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations on matters of substance and style.

List of Subjects in 26 CFR 1.441–1 through 1.483–2

Income taxes, Accounting.

List of Subjects in 26 CFR 1.861–1 through 1.997–1

Income taxes, Aliens, Exports, DISC, FSC, Foreign investments in U.S., Foreign tax credit, Source of income, U.S. investment abroad.

List of Subjects in 26 CFR 1.6001–1 through 1.6109–2

Income taxes, Administration and procedure, filing requirements.

Proposed Amendment to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are as follows:

PART 1—INCOME TAX

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *
Section 1.441–1(h) also issued under 26 U.S.C. 441(h). * * *
Section 1.995–8(f) also issued under 26 U.S.C. 995 (b)(4)(B). * * *
Section 1.995 (f)–1(b) (2) also issued under 26 U.S.C. 995(f)(4). * * *
Section 1.995 (f)–1(c) also issued under 26 U.S.C. 995(f)(3). * * *
Section 1.995 (f)–1(d) (4) and (5) also issued under 26 U.S.C. 995(f)(2)(B). * * *

Par. 2. Section 1.441–1 is amended as follows:

1. a. Paragrah (b)(1) is revised;

b. A new sentence is added at the end of paragraph (b)(3);

c. A new sentence is added at the end of paragraph (b)(4); and

2. A new paragraph (h) is added immediately after paragraph (g).

The revised and added provisions read as follows:

§ 1.441–1 Period for computation of taxable income.

* * * * *

(b) *Taxable year.* (1) The term "taxable year" means—

(i) The taxpayer's annual accounting period, if it is a calendar year or a fiscal year (within the meaning of paragraph (e) of this section);

(ii) The calendar year, if section 441 (g) (relating to taxpayers who keep no books or have no accounting period) applies:

(iii) The period for which the return is made, if the return is made under section 443 for a period of less than 12 months, referred to as a "short period"; or

(iv) In the case of a FSC, a small FSC or a DISC filing a return for a period of at least 12 months, the period determined under section 441(h) and paragraph (h) of this section.

* * * * *

(3) * * * For rules applicable to the adoption of a taxable year by a FSC or a DISC, see paragraph (h) of this section.

(4) * * * For rules applicable to a change of taxable year by a FSC or a DISC, see paragraph (h) of this section.

* * * * *

(h) *Taxable year of FSCs and DISCs*—(1) *In general.* (i) The taxable year of any FSC, or of any DISC established after December 31, 1984, shall be the same taxable year as the taxable year of the FSC's or DISC's principal shareholder (as defined in paragraph (h)(2) of this section). In addition, any domestic corporation which was a DISC on or at any time before December 31, 1984, and which elects to be treated as a DISC for any taxable year beginning after December 31, 1984, must adopt the same taxable year as its principal shareholder. For purposes of this section, the term "FSC" includes a small FSC as defined in section 922(b).

(ii) The corporation shall (without being required to obtain the consent of the Commissioner, and without filing Form 1128, Application for Change in Accounting Period) adopt the taxable year of its principal shareholder by ending the corporation's first taxable year for which it elects to be treated as a FSC or a DISC on the last day of the principal shareholder's taxable year, and the corporation shall file its return for such first taxable year and for succeeding taxable years on that basis. If the principal shareholder's annual accounting period is a 52–53 week year under section 441(f), the FSC or DISC shall also adopt such 52–53 week year as the taxable year.

(2) *Principal shareholder*—(i) *General rule.* The "principal shareholder" of a FSC or DISC is the shareholder (or group of shareholders having the same taxable year) who has the highest percentage of voting power in the FSC or DISC. If the principal shareholder of the DISC or FSC is a pass-through entity, such as an S corporation, a partnership, a trust or an estate, the DISC or FSC shall adopt the taxable year of the pass-through entity without regard to the taxable year of the pass-through entity's shareholders, partners or beneficiaries.

(ii) *Voting power.* (A) In the case of a FSC, "voting power" is determined on the basis of the total combined voting power of all classes of stock in the corporation entitled to vote.

(B) In the case of a DISC, "voting power" is determined on the basis of the one class of stock that the DISC is permitted to issue under section 992(a)(1)(C).

(iii) *More than one principal shareholder.* If two or more shareholders, or groups of shareholders, have the highest percentage of voting power in the FSC or DISC and have different taxable years, such FSC or DISC shall conform its taxable year (in the manner prescribed in paragraph (h)(1)(ii) of this section) to the taxable year of any one of such shareholders or groups, and only the shareholder or group shall be considered the principal shareholder for purposes of this paragraph (h).

(3) *Subsequent changes in FSC's or DISC's accounting period*—(i) *General rule.* Except as provided in this paragraph (h)(3), a FSC or a DISC shall not change its taxable year.

(ii) *Principal shareholder changes its taxable year.* If the principal shareholder of a FSC or a DISC changes its taxable year, the FSC or DISC shall also change its accounting period to conform to the principal shareholder's new taxable year, including using the same short period to effect such change. The Commissioner will not grant consent, under section 442, to a request for change in the principal shareholder's taxable year unless the FSC or DISC also agrees to make and makes the same change in its annual accounting period.

(iii) *New principal shareholder.* This paragraph (h)(3)(iii) is effective for changes of ownership described in subparagraphs (A) and (B) of this paragraph (h)(3)(iii) which occur [insert date 30 days after date this document is published in the **Federal Register** as a Treasury Decision]. For such changes in ownership occurring before such date, see 26 CFR 1.921–1T(b)(6) (Revised as of April 1, 1985). If (A) the voting power of the principal shareholder in the FSC or DISC is reduced by 10 or more percentage points, and (B) immediately after such reduction such shareholder is no longer a principal shareholder of the FSC or DISC, the FSC or DISC shall change its annual accounting period to that of the new principal shareholder in the manner prescribed by section 442 and the regulations thereunder. The short period required for the FSC or DISC to effect such change shall end on the last day of the new principal shareholder's taxable year within which the change in ownership occurs. For example, assume that in 1985 a FSC or DISC adopts the calendar year to conform to the annual accounting period of its sole shareholder, and that on March 1, 1987, a new shareholder having a fiscal year ending on June 30 becomes the principal shareholder by acquiring 60 percent of the total voting power of the stock of the FSC or DISC. The short period required to change the FSC's or DISC's annual accounting period shall be the period beginning January 1, 1987, and ending June 30, 1987. If, however, the new principal shareholder's taxable year were the fiscal year ending January 31, then the short period required for the FSC or DISC to change its annual accounting period shall be the period beginning January 1, 1988, and ending January 31, 1988. The change in the FSC's or DISC's annual accounting period shall be made in accordance with section 442 and the regulations thereunder.

* * * * *

§ 1.921–1T [Amended]

Par. 3. Paragraph (b)(6) of § 1.921–1T is removed.

Par. 4. Section 1.991–1 is amended as follows:

1. In the third sentence of paragraph (a), the phrase "and the interest equalization tax" is removed, and three new sentences are added at the end of paragraph (a).

2. a. In paragraph (b)(1) the third sentence is revised:

b. In paragraph (b)(2) a new sentence is added immediately after the fourth sentence:

c. Paragraph (b)(3) is revised; and

d. Paragraphs (b) (4) and (5) are removed.

3. New paragraph (e) and (f) are added immediately after paragraph (d).

§ 1.991–1 Taxation of a domestic international sales corporation (DISC).

(a) *In general.* * * * For taxable years of a DISC beginning after 1984, the shareholders of the DISC are required to pay an annual deductible interest charge on the shareholder's DISC-related deferred tax liability. The interest charge is imposed on the DISC shareholder, not the DISC. See section 995(f) and § 1.995(f)-1.

* * * * *

(b) *Determination of taxable income*—(1) *In general.* * * * For example, a DISC may choose its accounting methods and inventory method, or elect, under section 168 (b)(3), different recovery percentages for its recovery property than those prescribed under section 168(b)(1), as if the DISC were a domestic corporation which had not elected to be treated as a DISC. * * *

(2) *Choice of accounting methods.* * * * See also, section 267 for rules that may apply to transactions between a DISC and a related taxpayer requiring the matching of certain items of income and deduction and the deferral of certain losses. * * *

(3) *Annual accounting period.* For taxable years beginning after March 21, 1984, a DISC cannot choose or change its taxable year without regard to the taxable year of its principal shareholder. In general, a DISC and its principal shareholder must use the same taxable year. See section 441(h) and § 1.441–1.

* * * * *

(e) *Close of taxable year and termination of DISC election for all DISCs on December 31, 1984; Reelection required; Exemption of pre-1985 accumulated DISC income from tax.* Under section 805(b)(1)(A) of the Tax Reform Act of 1984, Pub. L. 90–369, the last taxable year of a DISC beginning before 1985 ended on December 31, 1984. The corporation's DISC election is also deemed revoked as of the close of business on December 31, 1984. A new DISC election must be made on Form 4876A in order for the corporation to be treated as a DISC for any taxable year beginning after December 31, 1984. See § 1.921–1T(b). See section 805(b)(2) of the Act and the Act and § 1.921–1T(a). for the tax treatment after 1984 of the accumulated DISC income derived before 1985 by certain DISCs.

(f) *Interest charge imposed on DISC shareholders after 1984.* Section 995(f) requires that for each taxable year beginning after 1984, each shareholder of a DISC shall pay a deductible interest charge on the shareholder's DISC-related deferred tax liability. The shareholder's DISC-related deferred tax liability is computed only with reference to the DISC's accumulated DISC income (earned in periods after 1984) and deferred by the DISC for more than one taxable year. Thus, in general, a DISC shareholder will not have a DISC-related deferred tax liability (and thus, no interest charge) until the close of the shareholder's taxable year following the taxable year with which or within which the first taxable year of the DISC (ending after 1984) ends. See § 1.995(f)–1.

Par. 5. Section 1.992–1 is amended as follows:

1. At the end of paragraph (a)(7), "and" is removed; at the end of paragraph (a)(8), the period is removed and ", and" is added in its place; immediately following paragraph (a)(8) the following new paragraph (a)(9) is

added to read as set forth below; and in the concluding text of paragraph (a), the language "subparagraphs (1) through (8) of this paragraph" is removed and the langauge "paragraphs (a)(1), through (a)(9) of this section" is added in its place.

2. The text of paragraph (e) is redesignated as paragraph (e)(1) and new paragraph (e)(2) is added to read as set forth below.

3. A new paragraph (j) is added to read as set forth below.

§ 1.992-1 Requirements of a DISC.

(a) * * *

(9) Is not a member of any controlled group (as defined in section 993(a)(3) and § 1.993—1(k)) of which a FSC or a small FSC (as defined in section 992) is a member. See paragraph (j) of this section.

(e) *Election in effect*—(1) * * *

(2) Section 805(b)(1)(A) of the Tax Reform Act of 1984 provides that the last taxable year of any DISC beginning in 1984, shall end on December 31, 1984, and under § 1.921–1T(a)(1) the corporation's DISC election is also deemed revoked as of the close of business on the date. A new DISC election must be filed on Form 4876A in order for the corporation to be treated as a DISC for any taxable year beginning after December 31, 1984. See § 1.992–2 (a) and (b).

* * * * *

(j) *Effect on a DISC of a FSC election*—(1) *General rule.* (i) Under section 992(a)(1)(E) and paragraph (a)(9) of this section, a corporation shall not be treated as a DISC for a taxable year if at any time during such taxable year such corporation is a member of a controlled group (as defined in section 993(a)(3) and § 1.993.1 (k)) of which a FSC or a small FSC (as defined in section 922) is a member. For purposes of this paragraph (j), a FSC also includes a small FSC. A FSC election within a group will prevail over any DISC election within such group. Thus, no corporation can make an election to be treated as a DISC for any taxable year if on any day of such taxable year such corporation is a member of a controlled group of which a FSC is a member. Further, the election of a corporation to be treated as a DISC is terminated on the first day for which the election of another corporation to be treated as a FSC becomes effective, if at any time during the DISC's taxable year such corporations are members of the same controlled group. Except as provided in paragraph (j)(2) of this section (relating to certain corporate acquisitions and reorganizations), the termination of the DISC election on such date means that such corporation shall not be treated as a DISC for its entire taxable year which includes such date, and the corporation shall be subject to tax on its taxable income for such entire taxable year. A revocation of the corporation's DISC election under section 992(b)(3) is not required.

(ii) The following example illustrates the provisions of this paragraph (j)(1):

Example. D. a calendar year corporation, has made a proper DISC election for 1985 and succeeding years. F, a corporation having a fiscal year beginning on July 1, is a member of the same controlled group of which D is a member. On May 1, 1986, F files an election to be treated as a FSC effective for F's taxable year beginning July 1, 1986. D's DISC election is treated as terminated on July 1, 1986, and D is not a DISC for its taxable year which begins January 1, 1986, and ends on December 31, 1986. F's election to be treated as a FSC for its taxable year beginning July 1, 1986, is not affected by the termination of D's DISC election.

(2) *Exception for certain acquisitions and reorganizations.* (i) In the case of a DISC and a FSC described in paragraph (j)(2)(ii) of this section for a taxable year, paragraph (j)(1) of this section shall not apply, and the domestic corporation may be treated as a DISC or the foreign corporation may be treated as a FSC for a short taxable year ending on the day preceding the day the DISC and the FSC became members of the same controlled group. If the DISC election is terminated, the DISC is required to satisfy all requirements to be treated as a DISC (including the 95 percent qualified export receipts and assets requirements of section 992(a)(1)) for the short taxable year, and may satisfy those requirements by making the distributions to meet such requirements provided in section 992(c). The $10 million limitation on qualified export receipts under section 995(b)(1)(E) for the short taxable year must be pro rated on a daily basis as provided in § 1.995–8(a). If the FSC election is terminated, the FSC is required to satisfy all requirements to be treated as a FSC for the short taxable year, and if the FSC is a small FSC, the $5 million foreign trading gross receipts limitation under section 924(b)(2) for the short taxable year must be pro rated on a daily basis. The controlled group of corporations shall make its choice to terminate the election of either the DISC or the FSC by filing the short period return required for the corporation whose election as a DISC or FSC (as the case may be) is to be terminated within the due date (including extensions) prescribed by section 6072(b). If the group fails to terminate the election of either the DISC or the FSC within such period, the DISC election of the domestic corporation shall be terminated as provided by paragraph (j)(1) of this section.

(ii) A DISC and a FSC are described in this paragraph (j)(2)(ii) for a taxable year if—

(A) Both the DISC and the FSC had an immediately preceding taxable year and each was treated as a DISC and as a FSC, respectively, for such immediately preceding taxable year,

(B) The DISC and the FSC were not members of the same controlled group on the first day of the taxable year, and

(C) The DISC and the FSC became members of the same controlled group of corporations during the taxable year by reason of the acquisition, directly or indirectly, of a member of the controlled group which includes such DISC (or FSC, as the case may be) by either—

(*1*) A member of the controlled group which includes such FSC (or DISC, as the case may be) (thereby making the DISC and the FSC members of the same parent-subsidiary controlled group), or

(*2*) The 5 or fewer persons who are individuals, estates or trusts who control the corporation which controls such FSC (or DISC, as the case may be) (thereby making the DISC and the FSC members of the same brother-sister controlled group.)

(iii) The provisions of this paragraph (j)(2) may be illustrated by the following example:

Example—(i) *Facts.* Z corporation owns all the the stock of D, a corporation which has elected to be treated as a DISC. X corporation owns all the stock of F, a corporation which has elected to be treated as a small FSC. Z, X, D and F use the calendar year as the taxable year. D was treated as a DISC, and F was treated as a small FSC, for their taxable years ending December 31, 1986. On January 1, 1987, Z and X are not members of the same controlled group. On August 1, 1987, Z purchases all of the stock of X, thereby making D and F members of the same controlled group.

(ii) *Result.* (A) If the group choses to retain the small FSC and terminate the DISC, under paragraph (j)(2)(i) of this section, D is permitted to end its taxable year on July 31, 1987, and may be treated as a DISC for such short year if it satisfies the requirements of section 992(a)(1) with respect to such short taxable year. The $10 million amount under section 995(b)(1)(E) for the short taxable year is limited to $5,808,219 ($10 million × 212/365). D's DISC election is terminated on August 1, 1987. F's small FSC election and $5 million amount under section 924(b)(2) are not affected by the acquisition.

(B) Alternatively, the group could chose to retain the DISC and terminate the small FSC with the same short taxable year ending July 3, 1987. F's $5 million amount for such short year would be limited to $2,904,110 ($5 million × 212/365), and D's DISC election

and $10 million amount under section 995(b)(1)(E) would not be affected by the acquisition.

Par. 6. Section 1.992–2 is amended by removing "Form 4876" each place it appears and adding in their place the words "Form 4876A", and by revising paragraphs (a) and (b)(2) to read as follows:

§ 1.992–2 Election to be treated as a DISC.

(a) *Manner and Time of election*—(1) *Manner.* The election to be treated as a DISC is made by the corporation by filing Form 4876A (Form 4876 for taxable years beginning before January 1, 1985) with the service center with which it would file its income tax return if the corporation were subject for such taxable year to all the taxes imposed by subtitle A of the Internal Revenue Code. The Form 4876A shall be signed by any person authorized to sign the corporation's return under section 6062, and shall contain the information required by such Form. Except as provided in paragraphs (b)(3) and (c) of this section, such election to be treated as a DISC shall be valid only if the statement of consent of every person who is a shareholder of the corporation as of the beginning of the first taxable year for which such election is to be effective is made on or is attached to such Form 4876A when filed with the service center.

(2) *Time for making election.* In the case of a corporation making an election to be treated as a DISC for the corporation's first taxable year, the election shall be made within 90 days after the beginning of such taxable year. In the case of a corporation making an election to be treated as a DISC for a taxable year which is not the corporation's first taxable year, the election shall be made during the 90 day period immediately preceding the first day of such taxable year.

(3) *Special rule for re-electing DISC status in 1985.* Under section 805(b) of the Tax Reform Act of 1985, the last taxable year of any DISC beginning in 1984 ended on December 31, 1984, and under § 1.921–1T (a)(1), the corporation's election to be treated as a DISC is deemed revoked after the close of business on such date. A corporation which was a DISC on December 31, 1984, and which wishes to be treated as a DISC for its first taxable year beginning after December 31, 1984, must make a new DISC election by filing Form 4876A in accordance with the instructions thereon and in accordance with paragraph (a)(1) of this section on or before June 4, 1987. The Form 4876A is to be filed within such period with the service center with which the corporation files its DISC return.

(b) *Consent by shareholders*—* * *

(2) *Transitional rule for certain corporations re-electing DISC status in 1985.* Notwithstanding paragraph (b)(1) of this section, if the corporation was a DISC on December 31, 1984, and the corporation files its election to be treated as a DISC for the corporation's first taxable year beginning after December 31, 1984, within the time prescribed in paragraph (a)(3) of this section, the election shall be valid if the consent of each person who was a shareholder of the corporation on January 1, 1985, is filed with the service center with which the election was filed on or before December 31, 1986. The form of such consent shall be the same as that prescribed in paragraph (b)(1) of this section. A copy of the corporation's statement of election, Form 4876A, shall be attached to the consent.

* * * * *

Par. 7. Section 1.995–2 is amended by revising the title of the section and by adding two new sentences immediately before the first sentence in paragraph (a) to read as follows:

§ 1.995–2 Deemed distributions in qualified years ending before 1985.

(a) *General rule.* This section applies to taxable years of a DISC ending before January 1, 1985. See § 1.995–2A for taxable years of a DISC beginning after December 31, 1984. * * *

* * * * *

Par. 8. New § 1.995–2A is added immediately after § 1.995–2 to read as follows:

§ 1.995–2A Deemed distributions in qualified years beginning after 1984.

(a) *General rule.* This section applies to taxable years of a DISC beginning after December 31, 1984. See § 1.955–2 for taxable years beginning before January 1, 1985. Under section 995(b)(1), each shareholder of a DISC shall be treated as having received a distribution taxable as a dividend with respect to the shareholder's stock on the last day of each taxable year of the DISC beginning after December 31, 1984, in an amount equal to the shareholder's pro rata share of the sum (as limited by paragraph (b) of this section) of the following items:

(1) The gross interest derived by the DISC during such year from producer's loans (as defined in § 1.993–4).

(2) The lower of—(i) Any gain recognized by the DISC during such year on the sale or exchange of property (other than property which in the hands of the DISC is a qualified export asset) which was previously transferred to it in a transaction in which the transferor realized gain which was not recognized in whole or in part, or

(ii) The amount of the transferor's gain which was not recognized on the previous transfer of the property to the DISC.

For purposes of this paragraph (a)(2), each item of property shall be considered separately. See paragraph (d) of this section for special rules with respect to certain tax-free acquisitions of property by the DISC.

(3) The lower of—(i) Any gain recognized by the DISC during such year on the sale or exchange of property which in the hands of the DISC is a qualified export asset (other than stock in trade or property described in section 1221(1)) and which was previously transferred to the DISC in a transaction in which the transferor realized gain which was not recognized in whole or in part, or

(ii) The amount of the transferor's gain which was not recognized on the previous transfer of the property to the DISC and which would have been includible in the transferor's gross income as ordinary income if its entire realized gain had been recognized upon the transfer.

For purposes of this paragraph (a)(3), each item of property shall be considered separately. See paragraph (d) of this section for special rules with respect to certain tax-free acquisitions of property by the DISC.

(4) Fifty (50) percent of the taxable income of the DISC for the taxable year attributable to military property (as defined in § 1.995–6).

(5) The taxable income of the DISC for the taxable year attributable to qualified export receipts of the DISC for such year which exceed $10,000,000 (as determined under § 1.995–8).

(6) The sum of—(i) In the case of a shareholder which is a C corporation, an amount equal to one-seventeenth (1/17) of the excess, if any, of the taxable income of the DISC for the taxable year, before reduction for any distributions during such year, over the sum of the amounts deemed distributed for the taxable year in accordance with paragraphs (a) (1) through (5) of this section,

(ii)(A) In the case of a shareholder which is a C corporation—

(*1*) An amount equal to 16/17 of the excess described in paragraph (a)(6)(i), multiplied by the international boycott factor as determined under section 999(c)(1), or

(*2*) In lieu of the amount determined under subparagraph (ii)(A)(*1*), 16/17 of

such excess as is described in section 999(c)(2), or

(B) In the case of a shareholder which is not a C corporation—

(*1*) An amount equal to all of the excess described in paragraph (a)(6)(i), multiplied by the international boycott factor as determined under section 999(c)(1), or

(*2*) In lieu of the amount determined under subparagraph (ii)(B)(*1*), the amount of such excess as is described in section 999(c)(2), and

(iii) An amount equal to the sum of any illegal bribes, kickbacks, or other payments paid by or on behalf of the DISC directly or indirectly to an official, employee, or agent in fact of a government. An amount is paid by a DISC where it *is* paid directly or indirectly by any officer, director, employee, shareholder, or agent of the DISC for the benefit of such DISC. For purposes of this section, the principles of section 162(c) and the regulations thereunder shall apply. The amount of an illegal payment made in the form of property or services shall be considered to be equal to the fair market value of such property or services at the time such property is transferred or such services are performed.

(7) The amount of foreign investment attributable to producer's loans of the DISC, as of the close of the "group taxable year" ending with such taxable year of the DISC, determined in accordance with § 1.995–5. The amount of such foreign investment attributable to producer's loans so determined for any taxable year of a former DISC shall be deemed distributed as a dividend to the shareholders of such former DISC on the last day of such taxable year. See § 1.995–3(e) for the effect that such deemed distribution has on scheduled installments of deemed distributions of accumulated DISC income under § 1.995–3(a) upon disqualification.

(b) *Limitation on amount of deemed distributions under section 995(b)(1)*—(1) *General rule.* The sum of the amounts described in paragraphs (a)(1) through (a)(6) of this section which is deemed distributed pro rata to the DISC's shareholders as a dividend for any taxable year of the DISC shall not exceed the DISC's earnings and profits for such year.

(2) *Foreign investment attributable to producer's loans.* The amount of foreign investment attributable to producer's loans of the DISC (as described in paragraph (a)(7) of this section) which is deemed to be distributed pro rata to the DISC's shareholders as a dividend for any taxable year of the DISC shall not exceed the lesser of the DISC's accumulated DISC income at the beginning of such year or the corporation's accumulated earnings and profits at the beginning of such year (but not less than zero)—

(i) Increased by any DISC income of the corporation for such year as defined in § 1.996–3(b)(2) (that is, any excess of the DISC's earnings and profits for such year over the sum of the amounts described in paragraphs (a)(1) through (a)(6) of this section), or

(ii) Decreased by any deficit in the DISC's earnings and profits for such year.

For example, if a DISC has a deficit in accumulated earnings and profits at the beginning of a taxable year of $10,000, current earnings and profits of $12,000, no amounts described in paragraphs (a)(1) through (a)(6) of this section for the year, and foreign investment attributable to producer's loans for the taxable year of $5,000, the DISC would have a deemed distribution described in paragraph (a)(7) of this section of $5,000 for the taxable year. As a further example, assume that the DISC had accumulated earnings and profits of $13,000 at the beginning of the taxable year, accumlated DISC income of $10,000 at the beginning of the taxable year, a deficit in earnings and profits for the taxable year of $12,000, no amounts described in paragraphs (a)(1) through (a)(6) of this section for the taxable year, and foreign investment attributable to producer's loans for the taxable year of $5,000. Under these facts the DISC would have no deemed distribution described in paragraph (a)(7) of this section for the taxable year because the DISC had no DISC income for the taxable year and the current year's deficit in earnings and profits subtracted from the DISC's accumulated DISC income at the beginning of the year produces a negative amount. For rules relating to the carryover to a subsequent year of the $5,000 of foreign investment attributable to producer's loans, see § 1.995–5(a)(6).

(3) *Ordering rule when limitation applies.* If, by reason of the limitation described in paragraph (b)(1) of this section, less than the sum of the amounts described in paragraph (a)(1) through (a)(6) of this section is deemed distributed, then the portion of such sum which is deemed distributed shall be attributed first to the amount described in paragraph (a)(1), to the extent thereof; second to the amount described in paragraph (a)(2), to the extent thereof; third to the amount described in paragraph (a)(3), to the extent thereof; and so forth, and finally to the amount described in paragraph (a)(6).

(c) *Examples.* Paragraphs (a) and (b) of this section may be illustrated by the following examples:

Example (1). Y is a corporation which uses the calendar year as its taxable year and elects to be treated as a DISC beginning with its taxable year beginning January 1, 1985. X, a corporation, is Y's sole shareholder. In 1985, X transfers certain property to Y in exchange for Y's stock in a transaction in which X does not recognize gain or loss by reason of the application of section 351(a). Included in the property transferred to Y is depreciable property described in paragraph (a)(3) of this section on which X realizes, and does not recognize by reason of the application of section 1245(b)(3), a gain of $20,000. If X had sold such property for cash, the $20,000 gain would have been recognized as ordinary income under section 1245. Also included in the transfer to Y are 100 shares of stock in a third corporation (which is not a related foreign export corporation) on which X realizes, but does not recognize, a gain of $5,000. In 1986, Y sells such property and recognizes a gain of $25,000 on the depreciable property and $8,000 on the 100 shares of stock. Y has accumulated earnings and profits at the beginning of 1986 of $5,000, earnings and profits for 1986 of $72,000, and taxable income for 1986 of $100,000. At the beginning of 1986, Y has $6,000 of accumulated DISC income, no previously taxed income, and a deficit of $1,000 of other earnings and profits. The total qualified export receipts of Y for 1986 are less than $10 million and there were no transactions in military property. Under these facts and the additional facts assumed in the table below, X is treated as having received a deemed distribution taxable as a dividend of $46,000 on December 31, 1986, determined as follows:

(1) Gross interest derived by Y in 1986 from producer's loans	$7,000
(2) Amount of gain on depreciable property (lesser of Y's recognized gain ($25,000) or X's gain not recognized on section 1245 property ($20,000))	20,000
(3) Amount of gain on stock (lesser of Y's recognized gain ($8,000) or X's gain not recognized ($5,000))	5,000
(4) One-seventeenth of the excess of the DISC's taxable income for 1986 over the sum of lines (1), (2) and (3) (1/17 of $100,000 minus $32,000))	$4,000
(5) Limitation on lines (1) through (4):	
(a) Sum of lines (1) through (4)	$36,000
(b) Earnings and profits for 1986	72,000
(c) Lesser of lines (5) (a) or (b)	$36,000
(6) Amount determined under paragraph (a) (7) of this section:	
(a) Foreign investment attributable to producer's loans under $1.995–5	$10,000

(b) Sum of the lesser of accumulated earnings and profits at beginning of 1986 ($5,000) or accumulated DISC income at beginning of 1986 ($6,000), plus excess of earnings nd profits for 1986 over line (5) (c) ($72,000 minus $36,000) $41,000
(c) Lesser of lines (6) (a) or (b) $10,000
(7) Total deemed distribution for 1986 (sum of lines (5) (c) and (6) (c)) $46,000

Example (2). Assume the facts are the same as in example (1), except that the earnings and profits for 1986 are only $30,000. Under these facts, X is treated as receiving a deemed distribution taxable as a dividend of $35,000 on December 31, 1986, determined as follows:

(5) Limitation on lines (1) through (4) of example (1):
(a) Line (5)(a) of example (1) $36,000
(b) Earnings and profits for 1986 ..... $30,000
(c) Lesser of lines (5)(a) or (b) $30,000
(6) Amount determined under paragraph (a)(7) of this section:
(a) Line (6)(a) of example (1) $10,000
(b) Sum of the lesser of accumulated earnings and profits at beginning of 1986 ($5,000) or accumulated DISC income at beginning of 1986 ($6,000), plus excess of earnings and profits for 1986 over line (5) (c) ($30,000 minus $30,000) $5,000
(c) Lesser of lines (6) (a) or (b) $5,000
(7) Total deemed distribution for 1986 (sum of lines (5)(c) and (6)(c) $35,000

Example (3). Assume the facts are the same as in example (1), except that Y has a deficit in accumulated earnings and profits at at the beginning 1986 of $4,000. This deficit is comprised of accumulated DISC income of $1,000, no previously taxed income and a deficit in other earnings and profits of $5,000. Assume also that Y has earnings and profits for 1986 of $45,000. Under these facts, X is treated as receiving a deemed distribution taxable as a dividend in the amount of $45,000 on December 31, 1986. Determined as follows:

(5) Limitation on lines (1) through (4) of example (1):
(a) Line (5)(a) of example (1) $36,000
(b) Earnings and profits for 1986 ..... $45,000
(c) Lesser of lines (5) (a) or (b) $36,000
(6) Amount determined under paragraph (a)(7) of this section:
(a) Line (6)(a) of example (1) $10,000
(b) Sum of the lesser of accumulated earnings and profits at beginning of 1986 ($4,000 deficit—but not less than zero) or accumulated DISC income at beginning of 1986 ($1,000), plus excess of earnings and profits for 1986 over amount on line (5)(c) (45,000 minus $36,000) $9,000
(c) Lesser of lines (6)(a) or (b) $9,000
(7) Total deemed distribution for 1986 (sum of lines (5)(c) and (6)(c)) $45,000

(d) *Special rules for certain tax-free acquisitions of property by the DISC*— (1) *Exchanges by DISC.* For purposes of paragraph (a)(2)(i) and (3)(i) of this section, if—

(i) A DISC acquires property in a first transaction and in a second transaction it disposes of such property in exchange for other property, and

(ii) By reason of the application of section 1031 (relating to like-kind exchanges) or section 1033 (relating to involuntary conversions), the basis in the DISC's hands of the other property acquired in such second transaction is determined in whole or in part with reference to the basis of the property acquired in the first transaction,

then upon a disposition of such other property in a third transaction by the DISC such other property shall be treated as though it had been transferred to the DISC in the first transaction. Thus, if the first transaction is a purchase of the property for cash, then paragraph (a) (2) and (3) of this section will not apply to a sale by the DISC of the other property acquired in the second transaction.

(2) *Transfer of another DISC.* For purposes of paragraph (a) (2)(i) and (3)(i) of this section, if a DISC acquires property in a first transaction and it transfers such property to a transferee DISC in a second transaction in which the transferor DISC's gain is not recognized in whole or in part, then such property shall be treated as though it had been transferred to the transferee DISC in the same manner in which it was acquired in the first transaction by the transferor DISC. For example, if X and Y are both DISCs, and if X transfers property to Y in a second transaction in which gain or loss is not recognized, paragraph (a) (2) or (3) of this section does not apply to a sale of such property by Y in a third transaction if X had acquired the property in a first transaction by a cash purchase. If, however, X acquired the property from a transferor other than a DISC in the first transaction in which the transferor's realized gain was not recognized, then paragraph (a) (2) or (3) of this section may apply to a sale by Y if the other conditions of paragraph (a) (2) or (3) are met.

(3) *Limitation on amount recognized by DISC.* If a DISC acquires property in a second transaction described in paragraph (d) (1) or (2) of this section in which it (or, in the case of a second transaction described in paragraph (d)(2), the transferor DISC) recognizes a portion (but not all) of the realized gain, then the amount described in paragraph (a)(2)(ii) or (a)(3)(ii) of this section with respect to a disposition by the DISC of such acquired property in a third transaction shall not exceed the amount of the transferor's gain which was not recognized on the first transaction minus the amount of gain recognized by the DISC (or transferor DISC) on the second transaction.

(4) *Examples.* The provisions of this paragraph (d) are illustrated by the following examples:

Example (1). X and Y are corporations each of which qualifies as a DISC and uses the calendar year as its taxable year. In 1985, X acquires section 1245 property in a first transaction in which the transferor's entire realized gain of $17 is not recognized. In 1986, X transfers such property to Y in a second transaction in which X realizes a gain of $20 of which only $4 is recognized. (On December 31, 1986, X's shareholders are treated as having received a distribution taxable as a dividend which includes such $4 under paragraph (a)(3) of this section, provided the limitation in paragraph (b) of this section is met.) Assume further that in a third transaction in 1987, Y sells such property and recognizes a gain of $25. Under section 995(b)(1)(C) and paragraph (a)(3)(ii) of this section, Y's shareholders are treated as having received a distribution taxable as a dividend on December 31, 1987, of $13, which is the amount of the gain not recognized on the first transaction ($17) reduced by the amount recognized by X on the second transaction ($4).

Example (2). Z is a DISC which uses the calendar year as its taxable year. In a first transaction in 1985, Z acquires section 1245 property in exchange for its stock from A, an individual who is Z's sole shareholder, in a transaction in which A's realized gain of $30 is not recognized by reason of section 351(a). In a second transaction in 1986, Z exchanges such property for other property in a like-kind exchange to which section 1031(b) applies and recognizes $10 of a realized gain of $35. (On December 31, 1986, A is treated as having

received a distribution taxable as a dividend which includes such $10 under paragraph (a)(3) of this section, provided the limitation of paragraph (b) of this section is met.) In a third transaction in 1987, Z sells the property acquired in the like-kind exchange and recognizes a gain of $25. Under section 995(b)(1)(C) and paragraph (a)(3)(ii) of this section, A is treated as having received a distribution taxable as a dividend on December 31, 1987, of $20, which is the amount of gain not recognized by A on the first transaction ($30) reduced by the amount of gain recognized by Z on the second transaction ($10).

(e) *Carryback of net operating loss and capital loss to prior DISC taxable year.* For purposes of sections 991, 995 and 996, the amount of the deduction for the taxable year under section 172 for a net operating loss carryback or carryover or under section 1212 for a capital loss carryback or carryover shall be determined in the same manner as if the DISC were a domestic corporation which had not elected to be treated as a DISC. Thus, the amount of the deduction will be the same whether or not the corporation was a DISC in the year the loss is incurred or in the year to which the loss is carried. For provisions setting forth adjustments to the DISC's, or former DISC's, deemed distributions, adjustments to its divisions of earnings and profits, and other tax consequences arising from such carrybacks, see § 1.996–8. See § 1.996–9 for the reduction of the amount of any net operating loss or capital loss carryforward of a DISC to the extent of the DISC's accumulated DISC income as of December 31, 1984.

Par. 9. Section 1.995–7 is amended by revising the title of the section and by revising paragraph (a) to read as follows:

§ 1.995–7 Taxable income attributable to base period export gross receipts in taxable years beginning after December 31, 1975, and ending before January 1, 1985.

(a) *General rule.* This section provides rules for the computation of taxable income attributable to base period export gross receipts. Section 995(b)((1)(E) (as in effect prior to its amendment by section 802(b)(1) of the Tax Reform Act of 1984) treats taxable income attributable to base period export gross receipts (as defined in paragraph (c)(4) of this section) as a deemed distribution to a shareholder of a DISC for taxable years of a DISC beginning after December 31, 1975, and ending before January 1, 1985. The amount attributable to base period gross receipts that must be included in the income of a shareholder will be referred to as the nonincremental distribution. The nonincremental distribution must be computed for each taxable year of a DISC beginning after December 31, 1975, and ending before January 1, 1985. Each such year shall be referred to as the computation year.

* * * * *

Par. 10. A new § 1.995–8 is added immediately after § 1.995–7, to read as follows:

§ 1.995–8 Taxable income attributable to qualified export receipts which exceed $10 million for a taxable year ending after 1984.

(a) *In general.* This section provides rules for the computation of the taxable income of the DISC attributable to qualified export receipts (as defined in section 993(a) and the regulations thereunder) of the DISC which exceed $10 million for a taxable year beginning after December 31, 1984. Section 995(b)(1)(E) treats the amount of such taxable income as a deemed distribution pro rata to the shareholders of the DISC for taxable years of the DISC beginning after December 31, 1984. If the DISC's qualified export receipts for the taxable year exceed the $10 million amount, the corporation does not lose its status as a DISC, but there will be a deemed distribution of all of the DISC's taxable income attributable to the qualified export receipts for the taxable year which exceed the $10 million amount. Under section 995(b)(4) and paragraph (f) of this section, only one $10 million amount is allowed among all DISC's which are members of the same controlled group (as defined in section 993(a)(3)). If the DISC's taxable year is a short period as defined in section 443, and for such year the DISC is not a member of a controlled group which includes any other DISC, the $10 million amount for such year shall be reduced to the amount which bears the same ratio to $10 million as the number of days in such short period bears to 365, and for purposes of this section, all references to the $10 million amount shall refer to such reduced amount. If the qualified export receipts of the DISC for the taxable year do not exceed the $10 million amount, section 995(b)(1)(E) and this section do not apply. The $10 million amount is an annual amount; thus, if $10 million exceeds the DISC's qualified export receipts for the taxable year, such excess may not be carried or applied to any other taxable year. For purposes of this section, the term "excess receipts" means the qualified export receipts of the DISC for the taxable year which exceed the $10 million amount. See paragraph (d) of this section for coordination of the deemed distribution under section 995(b)(1)(E) and the other deemed distributions under section 995(b)(1).

(b) *Determination of qualified export receipts which exceed $10 million*—(1) *General rule.* If the qualified export receipts of the DISC for the taxable year exceed the $10 million amount, the DISC shall segregate the qualified export receipts for the taxable year into two amounts, those which shall be considered not to exceed the $10 million amount, and those which shall be considered to exceed the $10 million amount. Except as provided in paragraphs (b) (2) and (3) of this section, the selection of the excess receipts may be made by the DISC in any manner. In general, the selection of the excess receipts permits the DISC to allocate the $10 million amount to the qualified export receipts of those transactions during the taxable year which permit the greatest amount of taxable income to be allocated to the DISC under the inter-company pricing rules of section 994. Except as provided in paragraphs (b) (2) and (3) of this section, the allocation may be made on a transaction-by-transaction basis among all the transactions occurring during the taxable year, or on the basis of groupings consistent with the groupings used by the DISC for purposes of applying the inter-company pricing rules under § 1.994–1(c)(7). Specifically, the $10 million amount is not required to be allocated to transactions in the order in which they occur during the taxable year, nor is the amount required to be allocated ratably to all transactions occurring during the taxable year. The allocation of the $10 million amount shall be made by the DISC on or before the due date of the DISC's return for the taxable year. The allocation of the $10 million amount may thereafter be amended only if (i) the DISC and all of the DISC's shareholders file amended returns consistent with any change in the allocation of the $10 million amount, and (ii) at the time such amended returns are filed, at least 12 full months remain in the statutory period (including extensions) for the assessment of a deficiency against any shareholder of the DISC. If less than 12 full months of such period remain with respect to any shareholder, the director of the service center with which such shareholder files its income tax return will, upon request, enter into an agreement extending such statutory period for the limited purpose of assessing any deficiency against such shareholder attributable to the change in the allocation of the $10 million amount.

(2) *Exception for related and subsidiary services.* Notwithstanding paragraph (b)(1) of this section, if qualified export receipts for the taxable year arise from a transaction in which services are or are to be provided which are related and subsidiary to any

qualified sale, exchange, lease, rental, or other disposition of export property (within meaning of section 993(a)(1)(C) and § 1.993–1(d)), the total amount of the qualified export receipts derived from such transaction must either be allocated in total, or not allocated at all to the $10 million amount. For example, if the qualified export receipts derived from a transaction are $50, of which $4 are attributable to related and subsidiary services and $46 are attributable to the sale of export property, the DISC must allocate either $50 or $0 of the qualified export receipts from such transaction to the $10 million amount; the DISC may not choose to allocate to the $10 million amount only the $4 attributable to the services or only the $46 attributable to the export property.

(3) *Ratable allocation where last transaction selected exceeds $10 million amount.* If, in selecting among the qualified export receipts of the taxable year, the qualified export receipts of the last transaction so selected by the DISC (when added to the receipts selected from other transactions) result in the DISC exceeding the $10 million amount for such year, the amount of qualified export receipts and taxable income attributable to such transaction which, for purposes of section 995(b)(1)(E) and this section shall be considered not to exceed the $10 million amount, shall be apportioned in proportion to (i) the amount of the qualified export receipts of the transaction that do not (when added to the receipts selected from other transactions) cause the DISC to exceed the $10 million amount, to (ii) the total amount of qualified export receipts from such transaction. The remainder shall be considered attributable to excess receipts for the taxable year. The deductions and the taxable income attributable to such transaction shall also be apportioned in the same manner. For example, assume that for the taxable year the DISC has selected nine transactions having total qualified export receipts of $9,975,000 as transactions to which the $10 million amount is to be applied, and that the tenth transaction the DISC would select has qualified export receipts of $40,000. In this instance, $25,000 ($10,000,000 −$9,975,000) of the qualified export receipts from such tenth transaction shall be considered not to exceed the $10 million amount, and $15,000 ($40,000 −$25,000) of such receipts shall be considered to be excess receipts. Accordingly, 37.5 percent (15/40) of the taxable income attributable to such transaction shall be deemed to be attributable to excess receipts.

(c) *Deductions taken into account.* After identifying the transactions of the taxable year which are considered to exceed the $10 million amount, the DISC shall reduce such excess receipts by, where applicable, the cost of goods sold attributable to such excess receipts, and the deductions of the DISC properly allocated and apportioned to such excess receipts in accordance with § 1.861–8. Such deductions include all applicable deductions from gross income for the taxable year provided under part VI of subchapter B of chapter 1 of the Code. The difference between the amount of the excess receipts and the deductions attributable to such excess receipts is the taxable income of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed the $10 million amount. Except as provided in paragraph (d) of this section, this amount of taxable income is treated as the deemed distribution under section 995(b)(1)(E) for the taxable year.

(d) *Coordination with other deemed distributions under section 995(b)(1).* If (but for this paragraph (d)) an amount of taxable income would be treated as distributed for the taxable year under section 995(b)(1)(E) and also under subparagraph (A), (B), (C) or (D) of section 995(b)(1), such amount of taxable income shall be treated as distributed for such taxable year under that other subparagraph and not under section 995(b)(1)(E) and shall be subtracted from the amount determined under paragraph (c) of this section. In the case of military property, as defined in section 995(b)(3)(B) and § 1.995–6(c), 50 percent of the taxable income of the DISC for the taxable year attributable to such property is deemed distributed under section 995(b)(1)(D) and § 1.995–6. The remainder of the taxable income attributable to military property is deemed distributed under section 995(b)(1)(E) unless the gross receipts attributable to such property is allocated to the $10 million amount.

(e) *Illustration.* The principles of this section may be illustrated by the following example:

Example—(i) *Facts.* P is a C corporation that uses the fiscal year ending September 30 as the taxable year. P owns all of the stock in Corporation D. D elects to be treated as a DISC for its taxable year beginning January 1, 1985. Under section 441 (h), D must use the same taxable year as P. Accordingly, D's taxable year beginning January 1, 1985, will end on September 30, 1985. Assume that in D's taxable year ending September 30, 1985, D sold four aircraft in separate transactions (S1, S2, M1, M2). Two of the sales (M1 and M2) were of military property. D also derived $12,000 of interest from producer's loans during the taxable year. D's qualified export receipts for the taxable year are $9,762,000, and assume that the deductions properly allocated and apportioned thereto are $8,550,000, as follows:

	Receipts	Deductions	Taxable income
Producer's loan interest	$12,000	0	$12,000
Sales:			
S1	3,750,000	$3,330,000	420,000
S2	3,000,000	2,670,000	330,000
M1	1,500,000	1,200,000	300,000
M2	1,500,000	1,350,000	150,000
	9,762,000	8,550,000	1,212,000

(ii) *Limitation on $10 million amount.* D's taxable year ending September 30, 1985, is a short period consisting of 273 days. Accordingly, the $10 million amount specified in section 995 (b) (1) (E) is limited to $7,479,452 (273/365 x $10 million) for the taxable year.

(iii) *Amount distributed under section 995 (b) (1) (E).* D allocates all of the qualified export receipts from S1 and S2, and $729,452 of the receipts from M1 against the $7,479,452 amount ($3,750,000 + $3,000,000 + $729,452 = $7,479,452), leaving the following amounts, reduced by the deductions properly apportioned and allocated thereto, as the amount distributed for the taxable year under section 995 (b) (1) (E):

	Excess receipts	Deductions	Taxable income
M1	$1,500,000	$1,200,000	$300,000
Less: Amount of M1 not in excess of limitation	(729,452)	(583,562) (1)	(145,890)
M1 Excess receipts	770,548	616,438	154,110
M2	$1,500,000	1,350,000	150,000
Producer's loan interest	$12,000	0	12,000
Taxable income attributable to excess receipts, see § 1.995–8(c)			316,110
Less: Amounts otherwise distributed under section 995(b)(1), see § 1.995–8(d): Section 995(b)(1)(A)—Producer's loan interest			(12,000)

(1) $729,452/$1,500,000 x $1,200,000 = $583,562. See paragraph (b)(3) of this section.

Section 995(b)(1)(D)—50% of taxable income attributable to sales of military property:	
M1 $154,110 x 50%	$(77,055)
M2 $150 x 50%	(75,000)
Deemed distribution under section 995 (b)(1)(E) for taxable year	152,055

(iv) *Deemed distribution for 1985.* The amount of D's deemed distribution under section 995 (b)(1) for D's taxable year ending September 30, 1985, is $437,464 determined as follows:

Section 995(b)(1)—	Amount
(A) Producer's loan interest	$12,000
(D) One-half of taxable income attributable to military property (50% of $450,000)	225,000
(E) Taxable income attributable to excess receipts	152,055
(F) One-sevententh of the excess of taxable income less amounts in (A), (D) and (E) 1/17 x ($1,212,000-$12,000-$225,000-$152,055)	48,409
	437,464

(f) *Members of a controlled group limited to one $10 million amount*—(1) *General rule.* For purposes of section 995 (b)(1)(E) and this section, in the case of a controlled group of corporations (as defined in section 993(a)(3) and § 1.993–1(k)), all DISCs which are members of such controlled group on a December 31, shall, for their taxable years which include such December 31, be limited to one $10 million amount. The $10 million amount shall be allocated equally among the member DISCs of such controlled group for their taxable years including such December 31, unless all of the member DISCs consent to an apportionment plan providing for an unequal allocation of the $10 million amount. Such a plan shall provide for the apportionment of a fixed dollar amount to one or more of the corporations, and the sum of the amounts so apprortioned shall not exceed the $10 million amount. If the taxable year includng such December 31 of any member DISC is a short period (as defined in section 443), the portion of the $10 million amount allocated to such member DISC for such short period under the preceding sentence shall be reduced to the amount which bears the same ratio to the amount so allocated as the number of days in such short period bears to 365. The consent of each member DISC to the apportionment plan for the taxable year shall be signified by a statement which satisfies the requirements of and is filed in the manner specified in § 1.1561–3(b). An apportionment plan may be amended in the manner prescribed in § 1.1561–3(c), except that an original or an amended plan may not be adopted with respect to a particular December 31 if at the time such original or amended plan is sought to be adopted, less than 12 full months remain in the statutory period (including extensions) for the assessment of a deficiency against any shareholder of a member DISC the tax liability of which would change by the adoption of such original or amended plan. If less than 12 full months of such period remain with respect to any such shareholder, the director of the service center with which such shareholder files its income tax return will, upon request, enter into an agreement extending such statutory period for the limited purpose of assessing any deficiency against such shareholder attributable to the adoption of such original or amended apportionment plan.

(2) *Membership determined under section 1563(b).* for purposes of paragraph (f) of this section, the determination of whether a DISC is a member of a controlled group of corporations with respect to any taxable year shall be made in the manner prescribed in section 1563 (b) and the regulations thereunder.

(3) *Certain short taxable years*—(i) *General rule.* If a DISC has a short period (as defined in section 443) which does not include a December 31, and such DISC is a member of a controlled group of corporations which includes one or more other DISC's with respect to such short period, then the amount described in section 995(b)(1)(E) with respect to the short period of such DISC shall be determined by (A) dividing $10 million by the number of DISCs which are members of such group on the last day of such short period, and (B) multiplying the result by a fraction, the numerator of which is the number of days in such short period and the denominator of which is 365. For purposes of the preceding sentence, section 1563(b) shall be applied as if the last day of such short period were substituted for December 31. Except as provided in paragraph (f)(3)(ii) of this section, a DISC having a short period not including a December 31 may not enter into an apportionment plan with respect to such short period.

(ii) *Exception.* If the short period not including a December 31 of two or more DISCs begins on the same date and ends on the same date and such DISCs are members of the same controlled group, such DISCs may enter into an apportionment plan for such short period in the manner provided in paragraph (f)(1) of this section with respect to the combined amount allowed to each of such DISCs under paragraph (f)(3)(i).

(4) *Effect on DISC shareholders.* The computation of the deemed distribution under section 995(b)(1)(E) and this section for a taxable year, as affected by the controlled group rules of this paragraph (f), applies to a shareholder of a DISC whether or not such shareholder is a member of the controlled group which includes such DISC.

Par. 11. New § 1.995(f)–1 is added immediately after § 1.995–8 to read as follows:

§ 1.995(f)–1 Interest charge on DISC-related deferred tax liability for periods after 1984.

(a) *Interest charge*—(1) *In general.*— Effective for taxable years ending after December 31, 1984, section 995(f) requires that each shareholder of a DISC shall pay for each taxable year interest on the shareholder's DISC-related deferred tax liability (as defined in paragraph (d) of this section) for such year at a rate of interest equal to the base period T-bill rate (as defined in paragraph (b)(2) of this section). See paragraph (b) of this section for the computation of the amount of the interest charge. The interest charge is computed on Form 8404. For purposes of this section, the term "DISC" includes a former DISC as defined in section 992 (a)(3). Accordingly, a shareholder of a former DISC is required to pay the annual interest charge on such shareholder's DISC-related deferred tax liability.

(2) *Related rules.* (i) The interest charge is an annual charge and is imposed on the shareholder of the DISC. The interest charge is not imposed on the DISC. Under section 995(f)(6), the amount of a shareholder's interest charge for any taxable year is treated for all purposes of the Code as interest paid or accrued on an underpayment of tax. Accordingly, subject to all otherwise applicable limitations on the deduction for interest, the amount of the annual interest charge imposed on the shareholder is deductible by the shareholder for the taxable year in which the amount of the interest charge is paid, in the case of a shareholder which uses the cash receipts and disbursements method of accounting, or accrued, in the case of a shareholder which uses the accrual method of accouting. See paragraph (j)(2) of this section. Because the interest charge imposed on the shareholder is treated as interest, the payment or accrual of the interest charge does not increase or decrease the shareholder's basis in the stock of the DISC, and does not increase or decrease the taxable income or earnings and profits of the DISC.

(ii) Under section 995(f)(2), the shareholder's DISC-related deferred tax liability for a taxable year, that is, the amount considered to be the "principal" amount of the "loan" on which the interest charge is computed, is determined only with reference to the accumulated DISC income (A) derived by the DISC in periods after 1984, and

(B) derived by the DISC in taxable years of the DISC that ended before the taxable year of the shareholder for which the interest charge is being determined.

(iii) No payments of estimated tax under section 6654 (in the case of individuals) or 6154 (in the case of corporations) are required with respect to the interest charge imposed by section 995(f)(1).

(iv) Paragraph (g) of this section contains rules for determining the interest charge for a taxable year in which shares in the DISC are transferred or redeemed. Paragraph (h) of this section provides rules for the computation and allocation of the interest charge where the DISC's shares are held by S corporations, trusts, estates or partnerships.

(b) *Computation of the interest charge*—

(1) *General rule.* Under section 995(f)(1), the amount of interest charge imposed on a DISC shareholder for a taxable year is equal to the product of—

(i) The shareholder's DISC-related deferred tax liability for such year, multiplied by,

(ii) A factor, which is equal to the base period T-bill rate compounded daily for the number of days in the shareholder's taxable year for which the interest charge is being computed.

See section 6622 for the requirement that all interest required to be paid under the Code be compounded daily. See paragraph (c) of this section for obtaining the table of base period T-bill rate factors reflecting daily compounding of the base period T-bill rate. See paragraph (g) of this section for special rules for computing the amount of the interest charge for a taxable year in which the shareholder transfers or acquires stock in the DISC.

(2) *Base period T-bill rate.* Under section 995(f)(4), the "base period T-bill rate" is the annual rate of interest determined by the Secretary to be equivalent to the average investment yield of United States Treasury bills with maturities of 52 weeks which were auctioned during the one-year period ending on September 30 of the calendar year ending with (or, if the shareholder's taxable year is not the calendar year, of the most recent calendar year ending before) the close of the taxable year of the DISC shareholder for which the shareholder's interest charge is being determined. For example, if a DISC shareholder's taxable year is a fiscal year ending on June 30, the base period T-bill rate applicable to the shareholder's taxable year ending June 30, 1987, would be the rate determined for the one-year period ending September 30, 1986. If the shareholder's taxable year is the calendar year, the base period T-bill rate applicable to the shareholder's taxable year ending December 31, 1987, would be the rate determined for the one-year period ending September 30, 1987.

(c) *Publication of base period T-bill rate and use of the table of factors for daily compounding.* The base period T-bill rate for each one-year period ending on September 30, as determined by the Secretary, shall be certified to the Commissioner and shall be published in a revenue ruling in the Internal Revenue Bulletin. Such revenue ruling shall also contain a table of factors reflecting daily compounding of the base period T-bill rate. To compute the amount of the interest charge for the taxable year under paragraph (b) of this section the shareholder shall use the base period T-bill rate factor corresponding to the number of days in the shareholder's taxable year for which the interest charge is being computed. Generally, the factor to be used will be the factor for 365 days. The factor to be used will be other than the factor for 365 days if the shareholder's taxable year for which the interest charge is being determined is a short taxable year, if the shareholder uses the 52–53 week taxable year, or if the shareholder's taxable year is a leap year. For example, if a DISC shareholder which had been using the calendar year as the taxable year changes its taxable year to the fiscal year ending January 31, then in computing the interest charge for the short taxable year January 1 to Janaury 31 required to effect such change, the shareholder will use the factor for a taxable year of 31 days.

(d) *DISC-related deferred tax liability*—(1) *Purpose.* for taxable years of a DISC shareholder ending after December 31, 1984, the shareholder's DISC-related deferred tax liability represents, in general terms, the cumulative amount of income tax that is considered to have been deferred from taxation in prior taxable years (ending after 1984) of the shareholder by use of the DISC. A separate interest charge is imposed on the shareholder for each taxable year of the shareholder until the deferred DISC income in distributed or deemed distributed by the DISC. The amount of the shareholder's DISC-related deferred tax liability is determined for each taxable year by taking the difference between the shareholder's income tax liability for the taxable year computed first with, and then without, the accumulated DISC income that has been deferred from taxation in prior taxable years of the shareholder. See paragraph (f) of this section for the definition of "deferred DISC income." This paragraph (d) provides certain special rules to be used solely for the purpose of determining the amount of the shareholder's DISC-related deferred tax liability. for any taxable year, these rules may result in the amount of the shareholder's DISC-related deferred tax liability being different than the amount of additional income tax that the shareholder would owe for such year if the deferred DISC income were received by the shareholder in an actual distribution to which section 996(a) applies.

(2) *In General.* (i) Under section 995(f)(2), the "shareholder's DISC-related deferred tax liability", with respect to any taxable year of a DISC shareholder ending after 1984, is the excess of—

(A) The amount which would be the tax liability (as defined in paragraph (3) of this section) of the shareholder for the taxable year if the amount of the deferred DISC income (as described in paragraph (f) of tis section) of such shareholder for such taxable year were included in the shareholder's gross income as ordinary income, over

(B) The actual amount of the shareholder's tax liability for such taxable year.

(ii) If in the taxable year the shareholder owns stock in more than one DISC, the deferred DISC income of such shareholder for the taxable year is the sum of the amounts of deferred DISC income of such shareholder with respect to each of such DISCs.

(iii) Where the DISC shareholder is a member of an affiliated group of corporations that files a consolidated return, the affiliated group's DISC-related deferred tax liability for the taxable year is the excess of (A) the amount which would be the group's tax liability (as defined in paragraph (3) of this section) including in gross income the deferred DISC income for the taxable year of each DISC shareholder which is a member of the group, over (B) the amount of the group's actual tax liability for such taxable year.

(iv) Except as provided in paragraphs (d) and (e) of this section, the computations necessary to determine the shareholder's DISC-related deferred tax liability shall be made under the law and the rates of tax applicable to the shareholder's taxable year for which the computations are made.

(v) The shareholder's DISC-related deferred tax liability for a taxable year is computed on Form 8404. See paragraph (j) of this section for the manner and time for filing or amending

Form 8404 and paying the interest charge.

(3) *Carrybacks not taken into account.* Under section 995(f)(2)(A), the shareholder's DISC-related deferred tax liability for any taxable year is determined without regard to any net operating loss or capital loss carryback or any credit carryback to such taxable year from any succeeding taxable year. For example, if for 1987 a calendar year shareholder of a DISC has a DISC-related deferred tax liability for the taxable year and thereby incurs an interest charge for such taxable year, and if the shareholder thereafter has a net operating loss (as defined in section 172(c)) for calendar year 1988, all or a portion of which is a net operating loss carryback to the 1987 taxable year, the shareholder's DISC-related deferred tax liability and interest charge for the 1987 taxable year are not affected by such net operating loss carryback, even if the shareholder recovers the total amount of the tax it paid for taxable year 1987, and has a net operating loss carryover to future taxable years.

(4) *Carryovers not taken into account*— (i) *General rule.* Under section 995(f)(2)(A)(i), the determination of the shareholder's tax liability for the taxable year including the deferred DISC income shall be made by not taking into account any loss, deduction or credit to the extent that such loss, deduction or credit may be carried by the shareholder to any other taxable year. If, however, the taxable year is the last taxable year to which the amount of a carryforward (of either a deduction or a credit) may be carried, the shareholder's tax liability including the deferred DISC income shall be computed with regard to the full amount of such carryforward, because the amount of the carryforward cannot be carried to another taxable year of the shareholder.

(ii) *Examples.* The provisions of this paragraph (d)(4) may be illustrated by the following examples:

Example (1) Assume that in 1986, a calendar year DISC shareholder recognizes only ordinary business income of $10,000, and has deferred DISC income for the taxable year of $5000. If the shareholder also had a net operating loss carryforward to 1986 of $12,000, the shareholder would be allowed a $10,000 net operating loss deduction for 1986 and would have a net operating loss carryforward to 1987 of $2000. For purposes of determining the shareholder's DISC-related deferred tax liability for 1986, the shareholder's computation of its tax liability including the deferred DISC income under section 995(f)(2)(A)(i) may take into account a new operating loss deduction of only $10,000, because $2000 of the total loss carryforward may be carried to the shareholder's following taxable year. Accordingly, the shareholder's taxable income for 1986 including the deferred DISC income is $5000 ($10,000 of ordinary income, plus $5000 of deferred DISC income, less the net operating loss deduction of $10,000 of ordinary income, plus $5000 of deferred DISC income, less the net operating loss deduction of $10,000). However, if 1986 were the last taxable year to which the $12,000 net operating loss carryforward could be carried, then the shareholder's tax liability including the deferred DISC income under section 995 (f) (2) (A) (i) may be computed by taking the full amount of the loss carryforward into account.

Example (2). Assume that in 1986, a calendar year DISC shareholder places in service an amount of property such that the amount of the investment credit determined for the taxable year under section 46 is $25,000, and that the shareholder has no credit carryforwards to the taxable year from any earlier taxable year. Assume that for the shareholder's 1986 taxable year the amount of the credit allowed is limited to $20,000, because of the limitation on the amount of the credit allowed under section 38 (c), and that the remaining $5000 of the credit determined for the taxable year may be carried back 3 years or forward 15 years. In determining the shareholder's DISC-related deferred tax liability for the 1986 taxable year, the amount of the credit that may be allowed to reduce the shareholder's tax liability including the deferred DISC income under section 995(f)(2)(A)(i) is limited to $20,000, because the remaining $5000 of the credit may be carried to another taxable year.

Example (3). The facts are the same as in example (2). Assume that $2000 of the $5000 excess credit for 1986 was applied to reduce 1985 taxes, and that none of the remaining $3000 could be carried-back to any other taxable year. If in 1987, all of the $3000 credit carried-over from 1986 is applied to reduce the shareholder's 1987 actual tax liability, that $3000 credit is also to be used to reduce the shareholder's 1987 tax liability including the deferred DISC income under section 995(f)(2)(A)(i).

(5) *Adjustments not involving carryovers or carrybacks.* In computing the amount of the DISC shareholder's taxable income and tax liability including the deferred DISC income under section 995(f)(2)(A)(i), there shall be taken into account adjustments in amounts allowable as deductions and in amounts excluded from or included in gross income to the extent that such adjustments do not result in amounts which may be carried back or forward by the shareholder to any other taxable year. For example, in the case of a DISC shareholder who is an individual, the amount of medical expenses allowable as a deduction under section 213 must be redetermined when computing the individual's taxable income and tax liability including the deferred DISC income under section 995(f)(2)(A)(i). The amount of medical expenses allowable as a deduction decreases because the taxpayer's adjusted gross income, increased by the amount of the deferred DISC income, would increase the limitation on the deductible amount of medical expenses, and the medical expenses not allowed may not be carried to any other taxable year. As a further example, in the case of an individual or a corporation which is a DISC shareholder, the amount allowable as a charitable deduction under section 170 is not redetermined when computing the taxpayer's taxable income and tax liability including the deferred DISC income under section 995(f)(2)(A)(i), because the amount of charitable contributions made for the taxable year which are not allowable as a deduction for such year by reason of the percentage of income limitations under section 170(b) may be carried over to subsequent taxable years under section 170(d).

(6) *Deferred tax liability determined without regard to any consequential deduction or credit.* Except as provided in paragraph (d)(8) of this section, in computing the amount of the DISC shareholder's tax liability including the deferred DISC income under section 995(f)(2)(a)(i), there shall not be taken into account any additional deduction or credit that would be allowable for any item that would be paid or accrued if the deferred DISC income were actually distributed to the shareholder. For example, when computing the shareholder's tax liability including the deferred DISC income, no deduction shall be taken into account for the additional state or local income or franchise taxes that would be due if such deferred DISC income were actually distributed to the shareholder. In addition, to simplify the calculations, in the case of a DISC shareholder who uses the accrual method of accounting, no deduction for the current year's interest charge shall be taken into account in computing the shareholder's DISC-related deferred tax liability for the current taxable year. However, after the amount of the interest charge for the current taxable year has been determined, such amount may be taken into account as a deduction for the current taxable year in determining the amount of the shareholder's income tax liability under chapter 1 of the Code for the taxable year in the circumstances described in paragraph (j)(2)(ii) of this section.

(7) *Source of deferred DISC income.* The source of the deferred DISC income which is considered included in the shareholder's gross income for purposes of section 995(f)(2)(A)(i) shall be

determined under section 861(a)(2)(D) and § 1.861–3(a)(5) in the same manner as if such amount were actually distributed to the DISC shareholder as a dividend.

(8) *Deemed paid foreign tax credit; separate limitation.* In the case of a DISC shareholder that is a corporation, if the shareholder elects the foreign tax credit for the taxable year, such shareholder shall, in computing its tax liability including the deferred DISC income, take into account any increase in the amount of the deemed paid foriegn tax credit under section 902(a) for foreign income taxes paid by the DISC to the extent that the deferred DISC income is treated as income from sources without the United States. In such case, in accordance with section 78, the shareholder shall also include the amount of such foreign income tax in computing its gross income including the deferred DISC income. Any increase in the amount of the foreign tax credit that would be allowable against the tax liability determined under section 995 (f)(2)(A)(i) with respect to the amount of the deferred DISC income shall be subject to the separate limitation required by section 904(d)(1)(B) in the same manner as if such amount were actually distributed to the DISC shareholder as a dividend.

(e) *Tax liability*— (1) *General rule.* Except as provided in paragraphs (e)(2) and (e)(3) of this section, for purposes of the two tax computations ("with and without" the deferred DISC income) required by section 995(f)(2) and paragraph (d) of this section, the term "tax liability" means the amount of the tax imposed on the DISC shareholder for the taxable year by chapter 1 of the Code, reduced by the credits (but not the credit carrybacks or carryovers described in paragraphs (d) (3) and (d) (4) of this section) allowable against such tax.

(2) *Certain taxes not to be taken into account.* For purposes of section 995 (f)(2) and paragraph (e)(1) of this section, any tax imposed by any of the following provisions shall not be treated as tax imposed by chapter 1 of the Code:

(i) Section 55 (relating to the alternative minimum tax) and

(ii) Any other provisons described in section 26 (b)(2) (relating to certain other taxes treated as not imposed by chapter 1 of the Code).

(3) *Certain credits not taken into account.* For purposes of section 995 (f)(2) and paragraph (e)(1) of this section, the credits allowed for the taxable year by the following sections shall not be taken into account in determining the DISC shareholder's tax liability:

(i) Section 31 (relating to taxes withheld on wages),

(ii) Section 32 (relating to the earned income credit), and

(iii) Section 34 (relating to the fuels credit).

(f) *Deferred DISC income*—(1) *In general.* Under section 995(f)(3)(A), for any taxable year of a DISC shareholder, the term "deferred DISC income" means the excess of—

(i) The shareholder's pro rata share of the DISC's accumulated DISC income (earned by the DISC in taxable years ending after December 31, 1984) as of the close of the computation year (as defined in paragraph (f)(2) of this section), over

(ii) The amount (if any) of distributions-in-excess-of-income (as defined in paragraph (f)(3) of this section) made by the DISC during the taxable year of the DISC immediately following the computation year.

Thus, in the simple case where the DISC has only one shareholder and the DISC and the shareholder have the same taxable year, the shareholder's deferred DISC income for the taxable year is the excess of the DISC's accumulated DISC income (derived from periods after 1984) at the beginning of the taxable year over the amount (if any) by which actual distributions for the taxable year which are considered to be made out of accumulated DISC income exceed the amount of DISC income for such year. Where shareholders of the DISC have a taxable year different from that of the DISC, the deferred DISC income is measured from the computation year, as described in paragraph (f)(2) of this section.

(2) *Computation year*—(i) *General rule.* Under section 995(f)(3)(B), with respect to any taxable year of a DISC shareholder, the "computation year" is the taxable year of the DISC ending with (or within, if the DISC and the shareholder do not have the same taxable year) the taxable year of the shareholder which precedes the taxable year of the shareholder for which the amount of deferred DISC income is being determined.

(ii) *Example.* The following example illustrates the relationship between the shareholder's taxable year and the DISC's computation year:

Example. Assume that a DISC, D, has two shareholders, A, the principal shareholder, and B, a minority shareholder. Shareholder A uses the calendar year as the taxable year, and shareholder B's taxable year is the fiscal year ending June 30. Under section 441(h), D must use the calendar year as the taxable year. In determining the amount of shareholder A's deferred DISC income for A's taxable year ending December 31, 1987, the computation year is D's taxable year ending December 31, 1986, that is, D's taxable year ending with shareholder A's taxable year preceding the taxable year of A for which A's deferred DISC income is being determined. In determining the amount of shareholder B's deferred DISC income for B's taxable year ending June 30, 1987, the computation year is D's taxable year ending December 31, 1985, that is, D's taxable year ending within B's taxable year preceding the taxable year of B for which B's deferred DISC income is being determined.

(3) *Distributions-in-excess-of-income.* Under section 995(f)(3)(C), with respect to any taxable year of a DISC, the term "distributions-in-excess-of-income", means the excess (if any) of—

(i) The amount of actual distributions made to the shareholder during such taxable year out of accumulated DISC income (as determined under section 996), over

(ii) The shareholder's pro rata share of the DISC income (as defined in section 996(f)) for such taxable year.

(4) *Illustrations.* The provisions of paragraph (f) of this section may be illustrated by the following example:

Example-(i) Facts. P corporation, which uses the calendar year as the taxable year, owns all of the stock of D, a domestic corporation which elects to be treated as a DISC for its taxable year beginning January 1, 1985. Under section 441(h), D must adopt the same taxable year as P; accordingly, D's taxable year beginning January 1, 1985, will end on December 31, 1985.

Assume that D has the following amounts for its three taxable years ending December 31, 1985, 1986 and 1987:

	1985	1986	1987
Taxable income and earnings and profits for the year	$45,000	$60,000	$40,000
Deemed distribution under section 995(b)(1)	5,000	10,000	15,000
DISC income for year	40,000	50,000	25,000
Actual distributions during year	0	20,000	60,000
Accumulated DISC income—end of year	40,000	85,000	65,000
Previously taxed income—end of year	5,000	0	0
Accumulated earnings and profits-end of year	45,000	85,000	65,000

(ii) *Result-1985.* Under section 995(f)(3), P will have no deferred DISC income for P's taxable year ending December 31, 1985, because D does not have accumulated DISC income derived from periods after 1984 as of the close of the computation year. With respect to P's taxable year ending December 31, 1985, the computation year under section 995(f)(3)(B) would be D's taxable year ending with or within P's taxable year ending December 31, 1984, which is prior to D's

current election to be treated as a DISC. Accordingly, because P has no deferred DISC income for its taxable year ending December 31, 1985, P will have no DISC-related deferred tax liability and therefore no interest charge for the taxable year.

(iii) *Result—1986.* Under section 995(f)(3), P will have deferred DISC income for P's taxable year ending December 31, 1986, of $40,000 determined as follows. With respect to P's taxable year ending December 31, 1986, the computation year is D's taxable year ending December 31, 1985. D's accumulated DISC income as of the close of the computation year is $40,000, and D made no distributions-in-excess-of-income in D's taxable year following the computation year (that is, in D's taxable year ending December 31, 1986, of the actual distributions of $20,000, only $5000 of this amount is treated as made out of accumulated DISC income, and because the DISC income for the year is $50,000, none of the actual distributions for the year reduce the accumulated DISC income as of the beginning of the taxable year.)

Accordingly, because P's deferred DISC income for the taxable year ending December 31, 1986, is $40,000, P must compute its tax liability for the year with and then without the $40,000 amount under section 995(f)(2) to determine its DISC-related deferred tax liability. P's interest charge for the taxable year ending December 31, 1986, under section 995(f)(1) will be the amount of the DISC-related deferred tax liability (the tax on $40,000) multiplied by the base period T-bill rate factor for the 365 day taxable year. See paragraph (b) of this section.

(iv) *Result—1987.* Under section 995(f)(3), P will have deferred DISC income for P's taxable year ending December 31, 1987, of $65,000 computed as follows:

D's accumulated DISC income derived from periods after 1984 as of the close of the computation year (D's taxable year ending December 31, 1986)	$85,000
Less: Amount of D's distributions in-excess-of-income made in D's taxable year ending December 31, 1987	20,000
P's deferred DISC income for taxable year ending December 31, 1987	65,000

The $20,000 amount of distributions-in-excess-of income for D's taxable year ending December 31, 1987, may be determined as follows:

Amount of D's actual distributions for D's taxable year ending December 31, 1987		$60,000
Less: D's previously taxed income at close of previous taxable year	0	
Deemed distribution for current year	$15,000	
Total amount of previously taxed income available for distributions during D's taxable year ending December 31, 1987	15,000	15,000
Difference—Amount of actual distributions for current year out of accumulated DISC income		45,000
Less: DISC income for current year		25,000
Distributions-in-excess-of-income for D's taxable year ending December 31, 1987		20,000

Accordingly, because P's deferred DISC income for its taxable year ending December 31, 1987 is $65,000, P must compute its tax liability for the taxable year with and then without the $65,000 amount to determine its DISC-related deferred tax liability under section 995(f)(2). P's interest charge for the taxable year ending December 31, 1987, under section 995(f)(1) will be the amount of the DISC-related deferred tax liability (the tax on the $65,000) multiplied by the base period T-bill rate factor for the 365 day taxable year.

(g) *Special rules for computation of the interest charge where DISC stock is transferred during taxable year*—(1) *General rule.* If the same number of shares of stock in the DISC are not held by the shareholder for the shareholder's entire taxable year, the amount of the interest charge for the taxable year with respect to the shares transferred or acquired by the shareholder shall be equal to the amount of the DISC-related deferred tax liability with respect to such transferred or acquired shares computed as if the shareholder held such shares for the shareholder's entire taxable year, multiplied by the base period T-bill rate factor corresponding to the number of days in the shareholder's taxable year that the shareholder held such transferred or acquired shares. In determining the number of days in the shareholder's taxable year that the shareholder held such transferred or acquired shares, the transferor shareholder shall include the day of the transfer and the transferee shareholder shall exclude the day of the transfer.

(2) *Adjustment for gain recognized on disposition*—(i) *Transferor.* For purposes of determining the deferred DISC income for the taxable year of a shareholder who disposes of stock in the DISC during the taxable year, the amount of gain recognized with respect to such stock which is treated under section 995(c) and § 1.995–4 as a dividend shall be treated as an actual distribution made by the DISC to such shareholder out of accumulated DISC income for the taxable year of the DISC which includes the date of such disposition. Accordingly, the amount of such gain which exceeds the shareholder's pro rata share of the DISC income for such taxable year shall be treated under section 995(f)(3)(C) and paragraph (f) of this section as a distribution-in-excess-of-income which reduces the amount of such shareholder's deferred DISC income for the taxable year of the shareholder in which the disposition of the shares occurs.

(ii) *Transferee.* For purposes of determining the amount of any transferee shareholder's deferred DISC income for a taxable year, if under section 996(d)(1) and § 1.996–4(a) such shareholder would be permitted to treat an amount of an actual distribution by the DISC made out of accumulated DISC income as made out of previously taxed income, such transferee shareholder's deferred DISC income for such taxable year shall be reduced by such amount.

(3) *Examples.* The provisions of this paragraph (g) may be illustrated by the following examples:

Example (1). X, an individual, uses the calendar year as the taxable year and owns all of the stock of D, a calendar year corporation which elects to be treated as a DISC for 1985. On May 1, 1987, X makes a gift to Y, a calendar year individual, of all the stock in D. On December 31, 1986, D had accumulated DISC income of $1000, and during its taxable year ending December 31, 1987, D made no distributions-in-excess-of-income. X recognizes no gain on the transfer of stock to Y. Accordingly, for the taxable year ending December 31, 1987, X and Y each have deferred DISC income of $1000, and each must compute a DISC-related deferred tax liability for 1987 with respect to this $1000 of deferred DISC income as if each of them owned the stock for the entire year. X will multiply X's DISC-related deferred tax liability by the base period T-bill rate factor for 121 days, and Y will multiply Y's DISC-related deferred tax liability by the base period T-bill rate factor for 244 days, to reflect the number of days during their taxable year that each held the stock in the DISC. If during the taxable year Y received a distribution-in-excess-of-income of $200, Y's deferred DISC income for the taxable year would be $800, and X's deferred DISC income for the year would also be $800, even though the actual distribution was received by Y.

Example (2). (i) Corporations A and D use the calendar year as the taxable year. A owns all of the stock of D, which elects to be treated as a DISC for 1985. On December 31, 1987, A sells all of its stock in D to B corporation, and recognizes a gain on the sale of $400. B corporation uses the fiscal year ending June 30 as the taxable year. Assume that D had accumulated DISC income at the close of 1986 of $600, and that D realized $250 of DISC income for 1987. Assume also that D

made no actual distributions out of accumulated DISC income during 1987. Accordingly, D has accumulated DISC income at December 31, 1987, of $850 ($600 plus $250), all of which was accumulated during the period A held the stock in the DISC. Under section 995 (c) and § 1.995–4, all of A's recognized gain of $400 on the disposition of the stock in the DISC is treated as a dividend, because A's recognized gain ($400) does not exceed the accumulated DISC income of D attributable to the stock disposed of by A ($850).

(ii) Under paragraph (g)(2) of this section, for purposes of section 995(f)(3), the $400 amount that A must treat as a dividend is treated as an actual distribution to A for 1987 out of accumulated DISC income. Accordingly, A's deferred DISC income for its taxable year ending December 31, 1987, is $450, determined as follows:

Accumulated DISC income of D at close of computation year (1986)		$600
Amount of gain realized by A in 1987 treated as an actual distribution out of accumulated DISC income	$400	
Less: DISC income for 1978	250	
Difference: Amount treated as a distribution-in-excess of-income	$150	150
Deferred DISC income		$450

A will use this $450 amount of deferred DISC income to compute its DISC-related deferred tax liability and interest charge for A's 365 day taxable year ending December 31, 1987.

(iii) Because B purchased the stock in D on December 31, 1987, B will have a part-year interest charge for B's taxable year ending June 30, 1988. D's computation year with respect to B's taxable year ending June 30, 1988, is D's taxable year ending December 31, 1986. B's deferred DISC income for its taxable year ending June 30, 1988, is $450, the same amount that A had with respect to A's taxable year ended December 31, 1987, because B is permitted, under section 996 (d), to take into account as a reduction in accumulated DISC income, the amount of gain A recognized on the disposition which was treated as an actual distribution to A out of accumulated DISC income. Accordingly, B must compute its DISC-related deferred tax liability and interest charge for the taxable year ending June 30, 1988, with respect to the $450 of deferred DISC income. The interest charge for B's taxable year ending June 30, 1988, is determined by multiplying B's DISC-related deferred tax liability (the tax on the $450 of deferred DISC income) by the base period T-bill rate factor for 182 days (January 1 to June 30, 1988), because B held the stock for only 182 days in B's taxable year ended June 30, 1988.

(iv) Note that under section 441(h), D must change its taxable year from the calendar year to the fiscal year ending June 30, because there has been a change in the taxable year of D's "principal shareholder" by reason of B's acquisition of D. See § 1.441–(h)(3).

(h) *Special rules for computation of the interest charge where DISC stock is held by certain passthrough entities*—(1) *Partnerships.* For purposes of section 995(f) and this section, if stock in a DISC is held by a partnership, the deferred DISC income of such partnership for the taxable year shall be attributed to each partner in proportion to the partner's interest in partnership income for the taxable year. Thus, each partner shall take into account its share of the partnership's deferred DISC income for the partnership taxable year ending with or within the taxable year of the partner, and each partner shall determine its DISC-related deferred tax liability and the interest charge thereon for the partner's taxable year as if the partner directly owned stock in the DISC.

(2) *S corporations.* For purposes of section 995(f) and this section, if stock in a DISC is held by an S corporation, the deferred DISC income of such S corporation for the taxable year shall be attributed to each shareholder in proportion to the shareholder's pro rata share of the S corporation's nonseparately computed income or loss (determined under section 1366(a)(1)(B)) for the taxable year. Thus, each shareholder shall take into account its share of the S corporation's deferred DISC income for the taxable year of the S corporation ending with or within the taxable year of the shareholder, and shall determine its DISC-related deferred tax liability and the interest charge thereon for the taxable year as if the shareholder directly owned stock in the DISC.

(3) *Estates or trusts.* For purposes of section 995(f) and this section, if stock in a DISC is held by an estate or trust, the deferred DISC income allocable to the stock in the DISC held by the estate or trust shall not be attributed to the beneficiaries of such estate or trust. The interest charge is imposed on the estate or trust. The estate or trust is required to determine its DISC-related deferred tax liability and interest charge for the taxable year in the same manner as other taxpayers. For this purpose, the tax rates applicable to estates and trusts for the taxable year under section 1(e) shall apply. In computing the taxable income of the estate or trust for the taxable year including the deferred DISC income under section 995(f)(2)(A)(i), the estate or trust shall not take into account a deduction under section 651 or 661 (relating to deductions for distributions) greater than the deduction for distributions allowed in computing the estate or trust's actual tax liability for such year under section 995(f)(2)(A)(ii).

(i) [Reserved]

(j) *Character, payment, assessment and collection of the interest charge*—(1) *Character.* Under section 995(f)(6), the interest charge imposed on a DISC shareholder for any taxable year is treated for all purposes of the Code in the same manner as interest on an underpayment of tax under section 6601. Thus, the interest charge may be deducted from the shareholder's gross income only to the extent the shareholder may deduct interest on an underpayment of tax, and subject to all applicable limitations on the deduction for interest.

(2) *Taxable year for which interest charge is deductible*—(i) *Cash method shareholder.* If the DISC shareholder uses the cash receipts and disbursements method of accounting, to the extent that the interest charge for a taxable year is deductible, it is deductible in the taxable year in which the shareholder pays the interest charge. For example, assume that on March 15, 1987, a cash method, calendar year DISC shareholder that is a C corporation pays $100, representing the full amount of the shareholder's interest charge for its taxable year ending December 31, 1986. The $100 amount is a proper interest deduction for the shareholder's taxable year ending December 31, 1987, the taxable year in which the cash method shareholder paid the interest charge.

(ii) *Accrual method shareholder.* If the DISC shareholder uses the accrual method of accounting, under the all events test the fact of the shareholder's liability for the interest charge for a taxable year is not fixed, and the amount of the interest charge cannot be determined, until the close of the period in which the shareholder can receive a distribution-in-excess-of-income with respect to such year. Prior to that time, all or any amount of the interest charge for the taxable year may be eliminated by such a distribution. Generally, however, if the DISC shareholder uses the accrual method and if the DISC and the shareholder have the same taxable year, then to the extent that the interest charge for a taxable year is deductible, the amount of the shareholder's interest charge is a proper deduction for such taxable year, because the period in which the DISC can make a distribution-in-excess-of-income to the shareholder

with respect to such taxable year ends on the last day of such shareholder's taxable year. For example, assume that on March 10, 1987, an accrual method, calendar year DISC shareholder that is a C corporation pays $150, representing the full amount of the shareholder's interest charge for its taxable year ending December 31, 1986. Assume also that the DISC uses the calendar year as the taxable year. When the DISC's 1986 taxable year closed, the shareholder could no longer receive a distribution-in-excess-of-income under section 995(f)(3)(A)(ii) with respect to the shareholder's 1986 taxable year. Accordingly, the $150 interest charge is a proper interest deduction for the shareholder's taxable year ending December 31, 1986, the taxable year in which the interest charge accrued under section 461.

(3) *Payment, assessment and collection of the interest charge.* (i) Under section 995(f)(6), the interest charge imposed on the DISC shareholder for any taxable year is required to be paid on the same date the shareholder's income tax return for such taxable year is required to be filed, without regard to extensions.

If the interest charge is not paid by that date, interest, compounded daily, at the rate specified under section 6621 shall be imposed on the amount of the unpaid interest charge from that date until the date the interest charge is paid. The interest charge for the taxable year shall be computed on a current Form 8404, which must be completed in accordance with the instructions thereon, and filed by the DISC shareholder together with a separate payment of the interest charge. The payment of the interest charge shall be made, and the Form 8404 shall be filed with the service center with which the shareholder's income tax return for the taxable year is required to be filed. In order to assure proper handling of the Form 8404 and crediting of payment of the interest charge to the shareholder's account, the Form 8404 and the payment of the interest charge should not be attached to or mailed together with the shareholder's income tax return for the taxable year. Payment of the interest charge may not be made by designating any portion of an overpayment of tax as an amount to be applied in payment of the interest charge.

(ii) Payments of estimated tax under section 6654 (in the case of an individual), or 6154 (in the case of a corporation) are not required with respect to the interest charge.

(iii) The interest charge is to be assessed, and may be collected in the same manner as interest on an underpayment of tax under section 6601.

(4) *Subsequent change in interest charge amount; amended Form 8404.* If the shareholder's actual tax liability for a taxable year changes, either by reason of an audit adjustment or by the filing of an amended return, the shareholder is required to file an amended Form 8404 only if the amount of the shareholder's DISC-related deferred tax liablity (as defined § 1.995(f)–1(d)) for such taxable year also changes. If so required, the shareholder shall file the amended Form 8404 by (i) clearly labeling across the top of a Form 8404 "Amended Form 8404 for Shareholder's Taxable Year Ending 19XX", (ii) by attaching to the amended Form 8404 a computation and an explanation of the change in the shareholder's DISC-related deferred tax liability and interest charge for such taxable year, and (iii) by enclosing payment for the amount of any additional interest charge or a statement of the amount of the interest charge required to be refunded to the shareholder. The amended Form 8404 should be attached to the copy of the shareholder's amended income tax return for the taxable year involved, or mailed separately to the service center with which the shareholder would file an amended income tax return for the taxable year involved.

Par. 12. Paragraph (b)(2) of § 1.996–1 is revised to read as follows:

§ 1.996–1 Rules for actual distributions and certain deemed distributions.

* * * * *

(b) *Rules for qualifying distributions and deemed distributions under section 995(b)(1)(G).* * * *

(2) *Special rules*—(i) *1976–1984.* For taxable years beginning after December 31, 1975, and before January 1, 1985, paragraph (b)(1) of this section shall apply to one-half of the amount of an actual distribution made pursuant to § 1.992–3 to satisfy the condition of § 1.992–1(b) (the gross receipts test) and paragraph (a) of this section shall apply to the remaining one-half of such amount.

(ii) *After 1984.* For taxable years beginning after December 31, 1984, in the case of a DISC shareholder which is a C corporation, paragraph (b)(1) of this section shall apply to $^{16}/_{17}$ of the amount of an actual distribution made pursuant to § 1.992–3 to satisfy the condition of § 1.992–1(b) (the gross receipts test) and paragraph (a) of this section shall apply to one-seventeenth ($1/17$) of such amount.

* * * * *

Par. 12. A new § 1.996–9 is added immediately after § 1.996–8 to read as follows:

§ 1.996–9 Adjustments attributable to the Tax Reform Act of 1984.

(a) *Exemption of pre-1985 accumulated DISC income from tax*—(1) *In general.* Under section 805(b)(2) of the Tax Reform Act of 1984, Pub. L. 98–369, 98 Stat. 494, 1001, in the case of actual distributions made after December 31, 1984, by a DISC or former DISC which was a DISC on such date, any accumulated DISC income of such DISC or former DISC which was derived before January 1, 1985, shall be treated as previously taxed income with respect to which there had previously been a deemed distribution to which section 996(e)(1) applied. For purposes of this section such accumulated DISC income shall be referred to as "exempt accumulated DISC income". For purposes of this section, a distribution includes any distribution in liquidation of a corporation.

(2) *Exception for previously disqualified DISCs.* Paragraph (a)(1) of this section does not apply to the amount of any actual or deemed distribution of any accumulated DISC income of a DISC or former DISC derived before January 1, 1985, which is scheduled to be received as a deemed distribution under section 995(b)(2) and § 1.995–3 by reason of the disqualification, termination or revocation of the DISC election of such corporation (a "disqualified DISC"). Thus, in the case of a corporation which was a disqualified DISC with respect to one or more prior taxable years ending before 1985, but which has re-elected to be treated as a DISC for one or more succeeding taxable years including the taxable year ending December 31, 1984, this paragraph (a)(2) applies to any accumulated DISC income scheduled to be received as a deemed distribution under section 995(b)(2), and paragraph (a)(1) of this section applies to any accumulated DISC income derived before 1985 which is not required to be distributed under section 992(b)(2).

(3) *Exception for amounts distributed to meet qualification requirements.* Paragraph (a)(1) of this section does not apply to the amount of any accumulated DISC income derived before January 1, 1985, which is distributed (or is required to be distributed) under section 992(c) after December 31, 1984, in order to satisfy the requirements of section 992(a)(1)(A) (relating to the 95 percent qualified export receipts test) or section 992(a)(1)(B) (relating to the 95 percent qualified export assets test), with respect to any taxable year ending before January 1, 1985.

(b) *Effect of distributions by DISC to shareholders*—(1) *Scope.* This paragraph

(b) applies only to distributions made after December 31, 1984, by a DISC (including a corporation which has elected to be treated as an interest charge DISC for any period after 1984) or a former DISC which has any amount of exempt accumulated DISC income (as defined in paragraph (a)(1) of this section), and it shall not apply after such corporation has distributed, under the ordering rules of this paragraph (b), all of its exempt accumulated DISC income. This paragraph (b) shall apply notwithstanding section 996(a)(1).

(2) *Ordering rule for distributions made before July 1, 1985.* Any actual distribution to a shareholder after December 31, 1984, and before July 1, 1985, by a DISC or former DISC described in paragraph (b)(1) of this section, which is made out of earnings and profits shall be treated as made—

(i) First, out of previously taxed income, to the extent thereof,

(ii) Second, out of accumulated DISC income derived after 1984, to the extent thereof, and

(iii) Third, out of other earnings and profits (including current earnings and profits in the case of a former DISC).

Any distribution which is treated as made out of previously taxed income under paragraph (b)(2)(i) shall be treated as made first out of exempt accumulated DISC income, to the extent thereof, and second, out of other previously taxed income.

(3) *Ordering rule for distributions made after June 30, 1985.* Any actual distribution to a shareholder after June 30, 1985, by a DISC or former DISC described in paragraph (b)(1) of this section, which is made out of earnings and profits shall be treated as made—

(i) First, out of other earnings and profits (including current earnings and profits in the case of a former DISC), to the extent thereof,

(ii) Second, out of previously taxed income, to the extent thereof, and

(iii) Third, out of accumulated DISC income derived after 1984.

Any distribution which is treated as made out of previously taxed income under paragraph (b)(3)(ii) shall be treated as made first out of exempt accumulated DISC income, to the extent thereof, and second, out of other previously taxed income.

(4) *Exception for qualifying distributions and foreign investments attributable to producer's loans.* This paragraph (b) shall not apply to any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements), or to any deemed distribution pursuant to section 995(b)(1)(G) (relating to foreign investment attributable to producer's loans). Such distributions shall be treated as described in section 996(a)(2).

(c) *Earnings and profits attributable to exempt income.* The earnings and profits of a corporation which receives a distribution directly or indirectly from a DISC or former DISC shall be increased by the amount of money and the adjusted basis of any property received in a distribution which is treated as made out of previously taxed income attributable to exempt accumulated DISC income.

(d) *No adjustment to basis in stock of DISC for exempt income.* Notwithstanding section 996(e), a shareholder's basis in the stock of a DISC or former DISC shall not be increased by the amount of exempt accumulated DISC income which is treated as previously taxed income, and such basis shall not be reduced by the receipt of such amount as previously taxed income in a distribution to which paragraph (b) of this section applies.

(e) *Carryover basis in property received in a distribution of exempt income.* If property other than money is received in a distribution of exempt accumulated DISC income as previously taxed income, and if such property was a qualified export asset (as defined in section 993(b)) on December 31, 1984, then for purposes of section 311, no gain or loss shall be recognized on the distribution of such property, and the shareholder who receives such property shall have a basis in such property equal to the basis of such property in the hands of the DISC or former DISC.

(f) *Reduction of net operating loss and capital loss carryovers.* In the case of a DISC (including a a corporation which has elected to be treated as an interest charge DISC for any period after 1984) or a former DISC which was a DISC on December 31, 1984, the amount of any net operating loss or capital loss of such corporation that was incurred in a taxable year in which such corporation was a DISC and which is a net operating loss or capital loss carryover to any taxable year ending after December 31, 1984, shall be reduced by the amount of exempt accumulated DISC income (as defined in paragraph (a)(1) of this section) of such corporation as of December 31, 1984. If the sum of such carryovers exceeds the amount of such exempt accumulated DISC income, the exempt accumulated DISC income shall first be applied to reduce the amount of such net operating loss carryover, and the amount of such exempt accumulated DISC income (if any) which exceeds such net operating loss carryover shall be applied to reduce the amount of such capital loss carryover to the extent of such excess.

(g) *No credit allowed for foreign taxes attributable to exempt accumulated DISC income.* Notwithstanding sections 901(d) and 902, no credit shall be allowed for the amount of any income, war profits, or excess profits taxes paid or deemed paid to any foreign country or possession of the United States to the extent that such taxes are attributable to any exempt accumulated DISC income of a DISC or former DISC.

Par. 13. In § 1.6011–2, a new sentence is added immediately after the third sentence in paragraph (a) to read as follows:

§ 1.6011–2 Returns, etc. of DISCs and former DISCs.

(a) *Records and information.* * * * For taxable years beginning after 1984, every DISC or former DISC shall also disclose on the Schedule K (Form 1120–DISC) the amount of the shareholder's deferred DISC income for the shareholder's taxable year (as defined in section 995(f)(3)). * * *

* * * * *

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 87–2015 Filed 2–2–87; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 557

Certification and Use of Army Airfields by Other Than United States Department of Defense Aircraft

AGENCY: Department of the Army.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is proposing to add Part 557 Title 32, of the Code of Federal Regulations, which establishes the responsibilities and describes the procedures for Certification and Use of Army Airfields by Other than United States Department of Defense Aircraft. This publication establishes requirements and responsibilities and provides instructions for non-DOD aircraft operators to request permission to use U.S. Army airfields.

DATE: Comments must be received March 5, 1987.

ADDRESS: Send comments to U.S. Army Aeronautical Services (USAASO), Cameron Station, Alexandria, VA 22304–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Cole, U.S. Army Aeronautical Services Office (USAASO), Cameron Station, Alexandria, VA 22304–5050, telephone (202) 274–7796/6304.

SUPPLEMENTARY INFORMATION: This publication established the U.S. Army Aeronautical Services Office as the office of primary responsibility for use of Army airfields by other than DOD aircraft, includes DOD policy regarding use of military airfields by other than DOD aircraft; includes criteria for the commander to use in considering joint use; provides new forms for permit application; explains types of joint use; includes information on fixed base operations; designates the approving authorities for civil use of Army airfields; established minimum insurance requirements; and established landing, parking, and storage fees.

The Department of the Army has determined that this regulation is not a major rule as defined by E.O. 12291, and is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354.) DD Forms 2400, 2401, and 2402, contain reporting or record keeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511.) And have been approved by the Office of Management and Budget (OMB) under Control Number 0701–0050.

List of Subjects in 32 CFR Part 557

Aviation safety, Military air transportation, Airports, Air traffic control. Armed services.

The Part 557 is proposed to be added to 32 CFR to read as follows:

PART 557—CERTIFICATION AND USE OF ARMY AIRFIELDS BY OTHER THAN UNITED STATES DEPARTMENT OF DEFENSE AIRCRAFT

Subpart A—General Provisions

Sec.

Subpart B—Responsibilities

Subpart C—Authorized Use of Army Airfields

Subpart D—User Information

Subpart E—Aircraft Certification

Authority: 10 U.S.C. 8012; 49 U.S.C. 1507.

Subpart A—General Provisions

§ 557.1 Purpose.

This regulation prescribes policies, responsibilities, and procedures with regard to use of U.S. Army Airfields (AAFs) by other than Department of Defense (DOD) aircraft.

§ 557.2 References.

Required and related publications and prescribed referenced forms are listed in Appendix A.

§ 557.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this regulation are explained in the glossary.

§ 557.4 Waivers.

Waivers to requirements of this regulation are authorized by the Director, U.S. Army Aeronautical Services Office (USAASO) when in the best interest of the U.S. Government, subject to prior approval of the Assistant Secretary of the Army (Installation and Logistics).

§ 557.5 Information control number (OMB).

OMB No. 0701–0050 has been assigned to the forms and reports that request data from individuals or agencies not in the Federal Government. These forms and reports are referred to in Subparts C and D.

§ 557.6 Army policy.

The rapidly increasing number of aircraft, especially general aviation aircraft, in the National Airspace System (NAS) is causing a shortage of suitable landing areas. Because of this shortage, requests for use of AAFs by operators of other than DOD aircraft are continually increasing in numbers. The Army permits this use of AAFs when all of the following apply:

(a) Use is requested in advance by an individual: a company representative: or a representative if a local, State, Federal, or foreign government agency.

(b) Use will not keep the Army from carrying out its current and future mission.

(c) Air safety will not be degraded.

(d) Security will not be compromised.

(e) The AFF will be able to support the proposed operation.

(f) Applicable joint use criteria in § 557.7 through § 557.9 and Appendix B are satisfied.

(g) Minimum insurance requirements of Table 1–1 in Appendix D are met.

§ 557.7 DOD policy.

The 1958 Aviation Act authorized the DOD to regulate public use of military airfields. Within this context, a systematic approach has been developed to respond to requests for civil use of military airfields. The cornerstone of this approach is the following statement:

(a) "The DOD determines the feasibility and extent of joint use at

military airfields. The DOD will consider joint use when it does not compromise military response, security, readiness, or safety. Joint use of military airfields will be considered on case-by-case basis when a formal proposal is submitted by a local government agency eligible to sponsor a public airport. Established criteria and good judgment will be used by DOD when evaluating formal proposals."

(b) The above policy statement pertains primarily to long term joint use and fixed base operations.

§ 557.8 User requests/proposals.

Each user request/proposal will be considered, however, Army and other DOD requirements will take precedence over use of AAFs by others. AAFs will only be considered for use by nonexempt aircraft when such use is not—

(a) In competition with civil airports or commercial air carriers.

(b) Solely for the convenience of passengers or aircraft operators.

(c) For nonexempt transient aircraft servicing.

(d) For private enterprise that promotes, benefits, or favors a commercial venture, except as allowed by this regulation.

(e) For customs handling purposes.

§ 557.9 Criteria for considering long-term joint use/fixed base operations.

Appropriate approving authorities will consider the criteria contained in Appendix B when responding to long-term joint use or fixed base operation requests.

§ 557.10 Suspension or termination of joint use.

The Army reserves the right to suspend or terminate joint use of an AFF when—

(a) Such use is inconsistent with national defense.

(b) A user's liability insurance is canceled or expires.

(c) A user is not operating in accordance with agreed to procedures or approved purposes.

(d) It is in the best interest of the Army, DOD, or the U.S. Government.

§ 557.11 Prior users agreements or leases.

Users agreements of leases in effect before publication of this regulation will remain in force until they expire or are canceled. At that time any new agreements will be governed by this regulations.

§ 557.12 Identification numbers.

Approving officials named in Table 2–1 in Appendix D will develop an identification number that will identify the approving authority, the year the request was approved, the number of the approval, and the type operation approved. The number will be recorded in the appropriate block of the DD Form 2401 (Civil Aircraft Landing Permit). Instructions for developing identification numbers are given in Figure 1–1 in Appendix D. The identification number will be placed in the appropriate block of DD Form 2401.

Subpart B—Responsibilities

§ 557.13 The Assistant Secretary of Army (Installation and Logistics).

The ASA(I&L) is responsible for general Secretariat oversight of AAF utilization, including the formulation, execution, and review of related policies, plans and programs, the establishment of objectives and appraisal of performance.

§ 557.14 Deputy Chief of Staff for Operations and Plans (DCSOPS).

The DCSOPS has the overall Army Staff responsibility for AAF operational activity impacting on the NAS and provides for representation with other DOD, local, State, Federal, national, and international agencies or individuals. Other Army Staff principals or Army agencies that are responsible for planning or programming activities having impact on AAF operations within the NAS will consult with the DCSOPS executive agent during early stages of project development. All installations or unit mission changes that affect the NAS will be coordinated with the DCSOPS executive agent.

§ 557.15 Director U.S. Army Aeronautical Services Office (USAASO).

The Director, USAASO, serves as the executive agent for DCSOPS on the matters discussed in § 557.14. In this capacity the director is authorized direct contact with other Army Staff principals, major Army commands (MACOMs), Army installations, other military services, and other Federal, States, and local government, civil, national, and international agencies or individuals. The DCSOPS executive agent is responsible for—

(a) Department of the Army (DA) operational approval for user requests to operate at AAFs.

(b) Providing for DA interface with the Federal Aviation Administration (FAA) and other civil and government agencies at the international, national, and regional level.

(c) Ensuring the development, coordination, and implementation of plans, policies, and procedures pertaining to use of AAFs by other than DOD aircraft.

(d) Providing for DA membership and participation on DOD, FAA, other government, national, and international boards, committees, groups, and panels.

(e) Providing for DA participation in public hearings or meetings, formal or informal, at the local, regional, or national level, on matters pertaining to the NAS.

(f) Providing guidance and assistance to MACOMs, installation commanders, and AAF commanders on matters pertaining to this regulation.

(g) The Director, USAASO may assign this function to a responsible Air Traffic Control (ATC) action officer.

§ 557.16 Chief of Engineers (COE).

After approval of a long-term joint use or fixed base operation the COE will issue an outgrant, lease, or license in accordance with AR 405–80 for the use of land, building, and other facilities at AAFs. This document will be based on a report of availability prepared by the installation commander.

(a) The FAA and the Army has authority to inspect civil operations at Army airfields to ensure compliance with applicable Federal Aviation Regulations (FARs) or Army Regulations (ARs).

(b) The outgrant, lease, or license may be canceled for noncompliance with FARs or ARs.

§ 557.17 Assistant Chief of Staff for Intelligence (ACSI).

The ACSI exercises overall Army Staff responsibility for Army interaction with foreign representatives. In this capacity, the ACSI—

(a) Is the approval authority for access to all Army installations or facilities by foreign personnel, less those in the following categories for which approval authority has been delegated to other Army Staff principals, MACOMs, or local commanders.

(1) Those traveling on approved invitational travel orders prepared under provisions of AR 12–15 (students or AR 550–2 tours).

(2) Those in a transient status (such as crew rest, remain overnight, loading or offloading cargo, or procurement of aircraft services).

(3) Those engaged in fulfilling an approved Army contract involving unclassified information.

(4) Those representing foreign media, when traveling under the auspices of AR 360–5.

(5) Those engaged in an approved cross-border movement under the provisions of AR 525–16.

(6) Those involved in an approved unit exchange under the provisions of AR 350–11.

(7) Those whose access is exclusively for social or other activities open to the general public

(b) On request, provides guidance concerning the propriety of installation or facility access by nationals of communist and other countries whose aims are not in accord with those of the United States.

(c) On request, and in coordination with Office of the Deputy Chief of Staff for Operations and Plans, provide DA guidance concerning operational security implications inherent in installation/facility access by foreign personnel. (See AR 350–11.)

§ 557.18 Other Army Staff principals or heads of Army agencies that are responsible for planning or programming activities having impact on AAF operations within the NAS.

These individuals will consult with the DCSOPS executive agent during early stages of project development. All installations or unit mission changes that affect the NAS will be coordinated with the DCSOPS executive agent.

§ 557.19 Major Army commanders.

MACOM commanders will—

(a) Advise and assist the Director, USAASO on matters requiring agreements with the FAA and other agencies.

(b) Approve or disapprove user requests as authorized. (See §§ 557.24, 557.25, 557.30(c) and Appendix D, table 2–1.) MACOM commanders will also assign identification numbers to approved requests. (See § 557.12).

(c) Forward copies of forms shown below to the Director, USAASO, ATTN: Airspace Support Division, Cameron Station, ALEX, VA 22304–5050.

(1) DD Form 2401.

(2) DD Form 2400 (Civil Aircraft Certificate of Insurance).

(3) DD Form 2402 (Civil Aircraft Hold Harmless Agreement).

(d) Recommend approval or disapproval of requests for use of AAFs when approval authority is maintained at DA level.

§ 557.20 Commanders of installations with AAFs.

Commanders of installations with AAFs—

(a) Approve or disapprove requests as authorized. (See §§ 557.24, 557.25, 557.30(d) and Appendix D, Table 2–1). Will assign identification numbers per § 557.12 and Appendix D, Figure 1–1 when requests are approved.

(b) Forward all requests that require higher level approval through channels to the appropriate approving authority with a recommendation for approval or disapproval.

(c) Continually review all user operations to ensure compatibility with the DA and DOD mission for national defense.

(d) May delegate their approval authority to the airfield commander or other appropriate individual.

(e) Will ensure that copies of papers, letters, reports, and other documents referred to in § 557.20(c) are forwarded, through appropriate channels, to the Director, USAASO, ATTN: Airspace Support Division, Cameron Station, ALEX, VA 22304–5050.

§ 557.21 AAF commanders.

The commander of an AAF where joint use operation has been approved—

(a) Control the administration and security of aircraft and passengers while they are on the airfield.

(b) Require users to schedule or modify their operations to keep from interfering with military activities when desired.

(c) Cooperate with customs and immigration officials, and health officials, and other appropriate public authorities regarding aircraft arrival and departure.

(d) Send a copy of each of the following to the Director, USAASO, ATTN: ALEX, VA 2203–5050, as soon as a completed copy is available.

(1) Letters of agreements (LOA).

(2) Lease agreements.

(3) DD Forms 2401, 2402, and 2403.

(4) Other papers, reports, or letters pertaining to user operators; in particular, those having to do with emergency or unauthorized landings.

(e) Ensure that specific operational procedures contained in FM 1–300, pertaining to civil aircraft operations, are implemented.

§ 557.22 Owners and operators of nonexempt aircraft.

Owners and operators of nonexempt aircraft will—

(a) Comply with special procedures, requirements, and restrictions imposed by this regulation.

(b) Comply with special procedures, requirements, and restrictions that may be imposed by the FAA, the post commander, or other appropriate authority.

Subpart C—Authorized Use of Army Airfields

§ 557.23 Types of joint use.

Joint use falls into four board categories. These are discussed in §§ 557.24, 557.25, 557.27, and 557.28.

§ 557.24 Exempt users.

Owners and/or operators of aircraft referred to below are authorized to land at AAFs except where specific restrictions are in force. Prior permission to land may be required by the installation or AAF commander.

(a) Any aircraft owned or operated by—

(1) The DOD.

(2) Any other U.S. Government agency when on official business.

(3) Local flying club members when the flying club is established in accordance with AR 215–2. Completion of a DD Form 2400 and a DD Form 2402 are required.

(4) Members of other DOD flying clubs, at the discretion of the installation commanders, when consistent with flying club regulations and policies. Priority for use will be established in accordance with AR 215–1 and AR 215–2. Completion of a DD Form 2400 and a DD Form 2402 are required.

(5) Flying club aircraft operators must obtain approval from appropriate approving authority before landing at AAFs that do not have established flying clubs.

(6) Representatives of Federal, State, county, or municipal governments when operated in connection with official, nonpolitically related, U.S. Government business. A declaration of responsibility for liability, or completed DD Form 2400, and a completed DD Form 2402 are required.

(b) Any civil aircraft under—

(1) Lease or contractual agreement for exclusive operational use by an agency of the U.S. Government that is operated by or for that agency; such as the FAA or Department of the Interior. This includes any aircraft under contract to the Military Airlift Command, the Military Traffic Management Command, and other agencies of similar nature. The DOD or other Government agency must declare responsibility for liability on the aircraft owner/operator must complete a DD Form 2400 and provide proof of insurance when requesting authorization to operate at an AAF.

(2) Lease or contractual agreement to the U.S. Air Force Civil Air Patrol (CAP) for liaison purposes and operated by a U.S. Air Force (USAF) liaison officer on official business. Completion of DD Form 2400 and DD Form 2402 are required unless the USAF assumes liability responsibility

(3) CAP control for an authorized mission when directed by USAF orders.

(4) U.S. Coast Guard (USCG) control for an official administrative or operational mission.

(5) Bailment contract if the U.S. Government is the insurer for liability.

(6) Use for humanitarian flights transporting critically ill or injured people to or from a military installation.

(7) Contractual agreement to any Federal, State, or local government agency in support of operations involving safety of life or property because of a natural disaster.

(c) Foreign government owned aircraft for which a reciprocal use agreement exists. Aircraft must have aircraft landing authorization number (ALAN). Prior permission may also be required by the AAF commander. (This category requires clearance with the Department of State and ACSI. USAASO will process required clearance and provide ALAN.)

§ 557.25 Short-term users.

Short-term users are those whose operational requirements can be accommodated without a lease arrangement or LOA. The appropriate approving authority may authorize short term use by issuing a CALP. (See § 557.26)

(a) Table 2–1 in Appendix D specifies categories of applicants that may be considered eligible to use AAFs.

(b) Prospective users must submit—

(1) Completed DD Forms 2400, DD Form 2401, and 2402.

(2) Other information as required by Table 2–1, in Appendix D with the above forms.

(3) A special request must be submitted when the user is from a foreign country. (The request may be in the form of a message if all pertinent information is provided.)

(c) The information required of short-term users should be submitted prior to the intended landing: however, commanders at their discretion may permit users, except for foreign users, to provide this information immediately after first landing. Foreign users must submit requests in sufficient time to allow for required coordination with ACSI, Department of State, and other principals, as necessary.

(d) The Army agency receiving the forms cited in § 557.25(b)(1) of this part will forward them to the appropriate approval authority as shown in Table 2–1 in Appendix.

(e) The approving authority will consider the factors in § 557.6 and § 557.7 and of this part § 557.23(e)(1) through § 557.25(e)(8) in deciding whether to approve the request:

(1) Current and programmed military activities at the installation.

(2) Runway, taxiway, and other airfield facilities.

(3) Availability of supplies and maintenance service.

(4) Volume and type of aircraft traffic.

(5) Crash and rescue equipment and protection.

(6) Overall security.

(7) Detraction from ability to perform mission.

(8) Other criteria on a case-by-case basis.

§ 557.26 Civil aircraft landing permit (DD Form 2401).

A DD Form 2401 may be issued by the appropriate approving authority when a request for landing meets the requirements of this regulation.

(a) A DD Form 2401 may be issued for a period of one year, except that it will terminate one day before expiration of the insurance policy expiration date. Should the insurance policy be renewed prior to its expiration date, the DD Form 2401 may be extended until the expiration date on the DD Form 2400.

(b) USAASO or a MACOM, provided the MACOM has jurisdiction over all AAFs involved, may issue a DD Form 2401 authorizing operations at more than one AAF.

(c) A copy of the DD Form 2401 should be on board the aircraft for inspection by the AAF commander or his or her designee.

§ 557.27 Long-term users.

Long-term users are those whose operational requirements can only be accommodated through a LOA, license, lease, or outgrant arrangement negotiated between the appropriate Army agency and the aircraft operator. The operator may be an individual or company, either private or commercial.

(a) LOAs may be used to accommodate those operators making frequent landings at an AAF Over a long period of time yet require limited use of airfield facilities.

(b) Operators who make more extensive use of AAFs are required to negotiate a license, lease, or outgrant with the appropriate district engineer office. Examples of such use includes those operators who require facilities for parking, maintenance, terminal operations and passengers, and other extensive facility use.

(c) Requests for long-term joint use will be submitted initially to the Director, USAASO to determine the operational feasibility of the proposal operation. If the request is operationally feasible, it will be forwarded to HQDA (DAEN-ZCE) WASH, DC 20310–2600 for further action.

§ 557.28 Fixed base operator (FBO).

When this fixed base operation is approved, a part or all of the airfield land and facilities are turned over to the FBO for exclusive use, subject to the terms and conditions of any lease, outgrant, LOA, or any other document in force between the Army and the FBO.

(a) FBO proposals are usually negotiated with a local community government agent but may be negotiated with any sponsor eligible to conduct fixed base operations at that particular AAF. A lease or outgrant will be negotiated between the appropriate district engineers office and the sponsor, not to exceed 25 years, with renewable clauses every 5 years. The document will detail the type of operations proposed and those procedures, restrictions, limitations, responsibilities, and requirements.

(b) FBO proposals will only be considered when received from a sponsor eligible to conduct fixed base operations.

(1) FBO proposals should be submitted through channels to the Director, USAASO, Cameron Station, ALEX, VA 22304–5050.

(2) The Director, USAASO, will ensure that all appropriate principals are provided a copy. Each principal will consider the criteria in appendix B to determine the feasibility and extent of joint use to be permitted.

(c) Should an environmental assessment (EA) or environmental impact statement (EIS) be needed, the Army will be the lead agency. The EA or EIS will be prepared according to AR 200–2. The cost will be borne by the FBO or sponsor. (For help, write HQDA (DAEN-ZCE), WASH DC 20310–2600).

§ 557.29 Fixed base operations.

Fixed base operations are managed independently except the FBO will ensure compliance with terms and conditions established by the Army for such operations.

(a) Essential Army traffic will normally receive priority over other traffic except for emergencies.

(b) Civil and other nonexempt aircraft are not required to obtain a DD Form 2401 or "Prior Permission Required" (PPR) phone call unless specifically required by the terms and conditions established in approving the fixed base operations.

(c) The FBO shall be held accountable for any liability resulting from fixed base operations at an AAF.

(d) Fixed base operation proposals should be completed as outlined in Figure 2–1 in Appendix D.

§ 557.30 Approval authority for use of AAFs.

Approval authority is delegated to various agencies and levels depending on the type of operation, origin of aircraft, and nationality of persons on board the aircraft.

(a) The Director, USAASO (See § 557.15) or his or her designated representative is responsible for determining the overall operational feasibility of all requests or proposals and has the authority to approve all exempt and short term user requests (see Table 2–1 in Appendix D) except that requests from foreign nations or operators of aircraft with foreign nationals on board will be cleared through ACSI (see § 557.17) and the Department of State.

(b) The COE or his designated representative, after operational feasibility of a request or proposal has been determined, is responsible for the issuance of a lease, license, or outgrant based on facility and/or land use availability.

(c) The MACOM commander or his or her designated representative has the authority to approve requests for use of all AAFs in that command as prescribed in Table 2–1 in Appendix D.

(d) The installation commander or his or her designated representative has the authority to approve requests for use of his or her AAF as prescribed in Table 2–1 in Appendix D.

Subpart D—User Information

§ 557.31 Insurance requirements.

The FBO or FBO sponsor and each aircraft owner or operator, including exempt operators, operating at am AAF will provide a copy of DD Form 2400 completed by an insurance company representative. A copy containing an original signature must be sent to the appropriate approving authority or an acceptable alternate, such as a declaration of liability responsibility by another party. All DOD and other federally owned aircraft are covered by the Federal Government.

(a) The amount of insurance carried will equal or exceed the minimum requirements shown in Table 1–1 in Appendix D. All policies must be current during the time the AAF is used.

(b) Each user's policy will provide for the following:

(1) The insurer waives any rights of subrogation the insurer may have against the United States by reason of any payment made under the policy for injury, death, or property damage that might arise out of, or in connection with, the insured's use of any AAF.

(2) The insurance afforded by the policy applies to the liability assumed by the injured under DD Form 2400, or the LOA, lease, license, or outgrant as negotiated.

(3) The insurer will send written notice of any intended cancellation or reduction of coverage at least 30 days before the effective date of such action. The policy must reflect this requirement.

§ 557.32 Fees for landing, parking, and storage.

Fees for landing, parking, and storage are collectable at the time of use. All fees collected will be deposited with the finance and accounting officers (FAO) using DD Form 1131 (Cash Collection Voucher) as prescribed by AR 37–103. Guidance and assistance may be obtained from the installation FAO.

(a) The amount of the fees is based on the mean gross takeoff weight (MGTOW) and the time the aircraft remains on the AAF.

(b) The installation commander will use Table 3–1 in Appendix D to determine the amount due.

§ 557.33 Exemption from fees.

Landing, parking, and storage fees will not be collected for aircraft that are—

(a) Operated by the following:

(1) Active duty, U.S. military or DOD civilian personnel on official business.

(2) CAP or USCG auxiliary personnel with official orders.

(3) National Guard, Reserve, or Reserve Officers Training Corps members with official orders.

(4) Members of military flying clubs or operators of other aircraft operating in accordance with military flying club regulations and procedures.

(b) Operated in support of official U.S. Government business or for any use for which the U.S. Government is responsible for payment.

(c) Operated under a contract for the U.S. Government.

(d) Foreign government-owned, when a reciprocal agreement exists between the United States and that foreign government.

(e) Foreign civil aircraft chartered for use by foreign heads of state on official State visits.

(f) Commercial carriers chartered by multinational organizations with which the United States has signed a support agreement.

(g) Otherwise exempt from this regulation or waived by proper authority.

§ 557.34 Waiver of fees.

The installation commander or his/her designee may waive the collection of landing, parking, and storage fees when in the best interest of the Government. (Examples include public relations or when collection of fees costs more than the amount of the fees).

§ 557.35 Approved landings.

Approved landings. Approved landings are those by operators of aircraft that are—

(a) Exempt from this regulation.

(b) Authorized to operate under the requirements set forth by this regulation.

§ 557.36 Unapproved landings.

Unapproved landings are those for which prior approval has not been given. They fall into the categories shown in § 557.36(a) through § 557.36(c) of this part. Table 3–2 in Appendix D provides additional information on unapproved landings.

(a) Emergency landings. Any aircraft operator who experiences an in-flight emergency may land at any AAF without prior approval. The following will apply:

(1) The Army will use any method or means to clear aircraft or wreckage from the runway to keep it from interfering with essential Army operations. Removal will be accomplished in a manner that will minimize additional damage to the aircraft.

(2) The aircraft owner or operator is not charged a landing fee but will pay all related costs for labor, material, parts, use of equipment, tools, and so forth; including, but not limited to, the following:

(*i*) Spreading foam on the runway.

(*ii*) Damage to runways, lighting, navigation aids, and other facilities.

(*iii*) Rescue, crash, and fire control.

(*iv*) Movement and storage of aircraft or wreckage.

(*v*) Aircraft repairs.

(*vi*) Fuel.

(*vii*) Other related expenses.

(b) Inadvertent landings. An inadvertent landing is one where the aircraft operator has landed due to flight disorientation or has mistaken the AAF for a civil or an authorized airport. Normal landing fees may be charged for this unapproved landing. Any subsequent landing will be assessed and processed as an international unapproved landing. (See § 557.36(c) of this part.)

(c) International unapproved landings. International unapproved landings are those made at AAFs by operators not in an exempt category and who have not obtained prior approval.

(1) The airfield commander will classify a landing as intentional unapproved when the civil aircraft operator has—

(*i*) Landed without prior approval or does not have an approved DD Form 2401 (CALP) on board the aircraft.

(*ii*) Landed for a purpose not approved on the DD Form 2401.

(*iii*) Landed in an aircraft not listed on the approved DD Form 2401.

(2) The airfield commander will charge punitive landing fees for landings of this type.

(3) Operators who make repeated intentional unapproved landings may have their aircraft detained at the installation until the unapproved landing has been reported to the FAA General Aviation District Office or Flight Standards District Office and USAASO, and until other requirements of this regulation have been met. Repeated international unapproved landings will jeopardize future use of an AAF by that operator and may result in legal action being taken.

§ 557.37 Responsibilities related to unapproved landings.

(a) Table 3–2 in Appendix D lists actions that must be taken for an unapproved landing. Send reports through channels as soon as possible, to the Director, USAASO, Cameron Station, ALEX, VA 22304–5050.

(b) The aircraft operator must explain in writing to the installation commander why the landing occurred. The installation commander will send a copy of this report through channels to the Director, USAASO.

(c) In case of an accident the installation commander will report the details through channels to the Director, USAASO.

§ 557.38 Fuel, services, and supplies.

(a) Those users who qualify under AR 703–1 may purchase Army fuel and oil on either a cash or credit basis.

(b) Prices charged for fuel and other supplies will be as stated in AR 37–60 unless there is an agreement or contract that states otherwise.

(c) Disposition of funds will be as stated in AR 703–1 and AR 37–108 (See NGR 37–108 for ARNG).

(d) Authorization and identification required for purchase will be as stated in AR 703–1, paragraph 3–32.

(e) An identaplate is not a credit card.

§ 557.39 Authorization to land at AAFs.

All foreign aircraft operators that fall into Category 11, Table 1–2 in Appendix D, must have advance authorization to land at AAFs. Exceptions are those aircraft referred to in § 557.24(c).

§ 557.40 Procedures to obtain advance authorization.

Prospective users will submit requests for landing authorization, to include the information required by § 557.25(b), as follows:

(a) For flights requiring HQDA DAMI-FL approval and that involve interaction of foreign personnel with Army elements, the request will be submitted via the respective foreign military attache to HQDA (DAMI-FL), WASH DC 20310–1000 a minimum of 30 calendar days prior to the intended landing date.

Note: Requests of this nature may be submitted via the respective U.S. Defense Attache Office (USDAO), but only if the country in question is not officially represented by a military attache in Washington, DC.

(b) For flights that do not require DAMI-FL approval and that involve the interaction of foreign personnel with Army organizations, the request may be submitted directly to the Director, USAASO a minimum of 10 working days prior to the intended landing date.

§ 557.41 Action addressee responsibilities.

(a) For requests submitted in accommodation with § 557.40(a), HQDA (DAMI-FL) will—

(1) Ensure that USAASO has received, or is promptly provided, a copy of the request.

(2) Process the request per procedures prescribed in AR 380–25 to include coordination with USAASO for action as prescribed in paragraphs (b) (2) and (3) of this section and with other HQDA agencies as appropriate.

(3) Correlate results of coordination and render approval/disapproval notification to the requestor and other concerned parties.

(b) For requests submitted per § 557.40(b), USAASO will—

(1) Review the request to ensure that approval by HQDA (DAMI-FL) is not required. If HQDA (DAMI-FL) approval is required, ensure a copy of the request is forwarded.

(2) Coordinate with the installation commander to determine whether the AAF is available and can accommodate the request.

(3) Contact the Department of State Political-Military Affairs Office and the FAA International Office to determine whether a diplomatic overflight clearance has been issued or is required.

(4) Correlate results of coordination and render approval/disapproval notification to the requester and other concerned parties.

Subpart E—Aircraft Certification

§ 557.42 Federal aviation regulation, 14 CFR Part 139.

The FAA requires airports in any state, territory, or possession of the United States, serving FAA certified air carriers to be certificated under FAR part 139 unless—

(a) The airport has been certificated under the grant of exemption issued by FAA to DOD.

(b) The pilot declares an emergency.

(c) The airfield serves as an authorized weather alternate for the air carrier.

(d) The air carrier is under an exclusive contract to an element of DOD and is landing at a DOD airfield.

(e) The carrier is an air taxi operation that is excluded from FAR part 139 requirements.

§ 557.43 Certification requests for AAFs.

Initial or renewal requests for certification will—

(a) Verify that the conditions of FAR Part 139 or the grant of exemption are met.

(b) Contain a list of crash rescue and firefighting equipment.

(c) Be forwarded through channels to Director, USAASO, ATTN: Airspace Support Division, Cameron Station, ALEX, VA 22304–5050, at least 180 days before the date indicated for certification. Sufficient copies will be forwarded so that USAASO receives three copies.

§ 557.44 Additional USAASO responsibility.

USAASO will—

(a) Ensure the request for certification is coordinated with the Army Staff and is submitted to FAA.

(b) Monitor the FAA action and notify the AAF commander of approval or disapproval.

§ 557.45 Inspection authority.

The FAA or an Army authority may inspect a certificated airfield to see if it complies with the terms of FAR Part 139 or the grant of exemption. If the airfield fails the inspection, the certification may be revoked.

Appendix A—References

Section I—Required Publication AR 37–60

Pricing for Material and services
AR 37–103
Finance and Accounting for Installations Dispensing Operations
AR 37–108
General Accounting and Reporting for Finance and Accounting Office
AR 200–2
Environmental Effects of Army actions
AR 380–25

Foreign Visitors and Accreditations
AR 703–1
Coal and Petroleum Supply and Management Activities
FAR
Federal Aviation Regulation (Cited in §§ 557.43 and 557.45.)
FM 1–300
Flight Operations and Airfield Management. (Cited in § 557.21(e))
NGR 37–108
Fiscal Accounting and Reporting-Army National Guard. (Cited in § 557.40)

Section II—Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this publication.

AR 1–20
Legislative Liaison
AR 12–15
Joint Security Assistance Traning (JSAT)
AR 20–1
Inspector General Activities and Procedures
AR 95–14
Army Aviation Aeronautical Information
AR 95–27
Operational Procedures for Aircraft Carrying Hazardous Material
AR 95–50
Airspace and Special Military Operations
AR 95–87
Aircraft Hurricane Evacuation
AR 210–20
Master Planning for Army Installations
AR 215–1
Administration of Army Welfare, Morale, and Recreation Activities and Nonappropriated Fund Instrumentalities
AR 215–2
The Management and Operation of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities
AR 350–11
Exchange of Small Army Units Between the United States and Allied Nations for training
AR 360–5
Public Information
AR 385–40
Accident Report and Records
AR 385–95
Army Aviation Accident Prevention
AR 405–80
Granting Use of Real Estate
AR 420–72
Surfaced Areas, Railroads, and Associated Structures
AR 420–90
Fire Protection
AR 500–60
Disaster Relief
AR 525–16
Temporary Cross Border Movement of Land Forces between the United States and Canada
AR 550–2
Visits to Department of the Army Installations and
TM 5–803–4
Planning Army Aviation Facilities
TM 5–820–1
Surface Drainage for Airfields and Heliports TM 5–823–4 Army Airfield-heliport Operational and Maintenance Facilities (Marking)
TM 5–823–4
Army Airfield—Heliport Operational and Maintenance Facilities (marking)
TM 95–226
Terminal Instrument Procedures (TERPS)

Section III—Prescribed Forms

DD Form 2400
Civil Aircraft Cetificate of Insurance. (Prescribed in §§ 557.24, 557.25, and 557.31)
DD Form 2401
Civil Aircraft Landing Permit. (Prescribed in §§ 557.2, 557.25, 557.26 and 557.38)
DD Form 2402
Hold Harmless Agreement. (Prescribed in §§ 557.24 and 557.25)

Section IV—Referenced Form

DD Form 1131
Cash Collection Voucher

Appendix B—Joint Use Criteria

B–1. General

Civil aircraft use of a military airfield is considered on a case-by-case basis when a proposal is submitted through channels to the appropriate military headquarters by an authorized sponsor. The proposal should include the type of operation, type of aircraft, and estimated annual operations.

a. Joint use must not interfere with national defense requirements, degrade safety, or in any way hamper DOD in carrying out its mission.

b. All agreements will hold the Government harmless for any liability or damage arising from civil use of Government property and all restrictions and conditions will be part of the agreement. The term of the agreement and/or lease cannot exceed 25 years. Title to real property improvements will pass to the Government at termination or be restored to a condition acceptable to the Government. The Government will have authority to terminate the agreement in a national emergency or when in the best interest of national defense.

c. Proposals should be initially submitted to the installation commander. In addition to commenting on the proposal, the local commander will obtain comments from the appropriate Department of Army Regional Representative (DARR) at the FAA Regional Headquarters Office before forwarding all documents to the appropriate MACOM.

d. Specific criteria used to evaluate joint use proposals are listed in paragraphs B–3 through B–9. Failure of the proposal to meet established joint use criteria will result in joint use being limited, restricted, or prohibited.

Table B–1—Wake Turbulence Table

If military aircraft are	And civil aircraft are	Joint use is
Heavy	heavy	possible.
Large	heavy	prohibited.
Small	heavy	prohibited.
Heavy	large	possible.
Large	large	possible.
Small	large	possible.
Heavy	small	prohibited.
Large	small	possible.
Small	small	acceptable.

B–2. Airspace/Air Traffic Control Criteria

Operational consideration will be based on the premise that military aircraft will receive priority handling (except in emergencies) if traffic must be adjusted or resequenced. Funding for manpower increases required in air traffic control or related support activities as a result of the civil operation will have to be accommodated outside DOD resources. Additional equipment or physical airfield changes must be funded by the civil sponsor. Specific items considered are—

a. Airspace saturation.

b. Special use airspace and military training route requirements.

c. Traffic flow capability.

d. ATC facility capability.

B–3. Traffic Mix Criteria

The impact of dissimilar operations characteristics or procedures between civil and military aircraft increases the potential for accidents or incidents and opens DOD to possible litigation. The following items will be considered in evaluating the traffic mix aspect of joint use.

a. Aircraft weapons.

b. Helicopter operation.

c. Instrument Flight Rules vs Visual Flight Rules.

d. High performance aircraft.

e. Training mission.

f. Aircraft wake turbulence. See Table B–1.

B–4. Military Activity Criteria for Joint Use.

The following items are considered from a mission compatability perspective.

a. Must be advantageous to DOD.

b. Will not adversely impact DOD mission.

c. special material storage or loading area identified. (Joint use will not be considered at installations with nuclear storage areas.)

d. Installations involved in training student pilots will not be considered for joint use.

e. Joint use will not be considered at locations with an alert force mission.

f. Installations subject to no-notice inspections or frequent exercises will not be considered for joint use.

g. Joint use must not adversely reduce flexibility for force beddown or other related activity.

h. Must not impair Mobilization activities.

B–5. Civil Aircraft Equipment and Aircrew qualification Criteria

The following iterms are recommended for civil aircraft operating in a joint use environment:

a. IFR certified aircraft.

b. IFR qualified crews.

c. Two-way radio and transponder.

B–6. Facilities Criteria

The majority of land for civil facilities must be located on the perimeter of the military installation with access that does not impact on installation traffic. Federal legislature jurisdiction should be retroceded to the State, particularly in exclusive use and access

areas. Military approval is required on siting, design, and construction of civil facilities. The following items will be considered in evaluating the impact of joint use on facilities.

a Civil Facilities.

(1) Availability of existing local civil facilities.
(2) Practicality of constructing or expanding a civil airfield.

b. Runway and Taxiway

(1) Prevement strength for wheel loading.
(2) Pavement width and length.
(3) Capacity.
(4) Dual or single runway.
(5) Access to runway from civil facilities.

c. Civil Facility Location

(1) Availability of non-Government land for taxiway, terminal, ramp, fuel storage, hangar, maintenance, and so forth.
(2) Availability of excess Government-owned land for civil facilities.

d. NAVAIDs

DOD will not provide manpower to install, operate, or maintain navigational equipment for the sole use of civil aviation. Consideration must be given to the adequacy of existing NAVIADs for the civil operation.

e. Fire, Crash, Rescue.

(1) Equipage.
(2) Manpower.

f. Noise Barriers

(1) Existing configuration.
(2) Civil requirement.

g. Aircraft Arresting Systems (AAS)

DOD will not install, alter, or remove AAS for the use or convenience of non-military traffic; therefore, consideration must be given to—

(1) Existing configurations.
(2) Civil requirements.

h. Air Installation Compatible Use Zone

Study required in conjunction with airspace analysis to include—

(1) Runways to be used.
(2) Traffic distribution.
(3) Peak hour use.
(4) Schedule of operating hours.
(5) Engine signatures.
(6) Approach/departure profiles.
(7) Climatic data.

i. Security

Clear separation of military and civil activities is essential to avoid increased security cost, increased threat to priority and sensitive resources. Joint use increases the possibility for sabotage, terrorism, and vandalism. Joint use will not be considered if military and civilian aircraft will be collocated on a parking ramp, where other than runway facilities are used, or where non-Government personnel would require access to, and routinely transit, the base. Specific security aspects to be considered in joint use are—

(1) Access of public to military resources.

(2) Impact on manpower if increased security is required.

B–7. Manpower Criteria

The following items must be considered from the perspective or impact on manpower and career limitations:

a. Workload versus manpower level.

b. Possibility of contract or civilianization of ATC facilities (cost comparison studies).

c. Impact on rotation of military ATC personnel.

B–8. Financial Criteria

Any logistical support or utilities provided by the Government are reimbursable. Some reimbursable items that could be recovered include labor, equipment use, and supplies provided. The civil sponsor must pay a prorated share for property and operation of the Government runway. All real property outleased will be processed through the Corps of Engineers at fair market rental value. The following must be considered in evaluating joint use proposals.

a. There must be no cost to DOD appropriations.

b. Cost must be reimbursable through services in lieu of user fees.

c. There must be no significant indirect costs.

d. The sponsor must have funding available for the civil facilities.

B–9. Environmental Criteria

Analysis will be required if joint use involves new aircraft types of new approach/departure tracks. For FBO operations an EA or EIS may also be required. The following items also must be considered in a joint use evaluation:

a. Sponsor for civil operation must pay for preparation of any EA or EIS that may be required.

b. DOD or the appropriate military services will be the lead agency in the preparation of the EA or EIS.

Appendix C—U.S. Army Comparative Information for 14 CFR Part 139 of the Federal Aviation Regulation

Subpart C—Airport Operations Manual

Note: Subparagraph 1a, 2a, and so forth reference FAA standards. Subparagraphs 1b, 2b, and so forth, define reference comparable Army standards.

1a. 139.31 Preparations

1b. Army directives, pamphlets, and technical manuals control the design, operation, and maintenance of aviation facilities. These documents are maintained at all levels of command and are followed closely. FM 1–300 specifies requirements for detailed standing operating procedures. References in this table establish requirements that are equal to or exceed Part 139 of the FAR.

Subpart D—Certification: Eligibility

2a. 139.43 Pavement.

2b. See TM 5–803–4, Chapter 4 (Standards 3, 8, 11, 15, and 19).

3a. 139.45 Safety areas.

3b. See TM 5–803–4 and TM 5–820–1, Chapter 4 (Standards 4, 12, 21, 29, and 30).

4a. 139.47 Marking and lighting runways, thresholds, and taxiways.

4b. TM 5–803–4 (Chapter 3) and TM 5–823–4 provide criteria for Army Corps of Engineers personnel to mark serviceable runways, taxiways, overruns, and shoulders in accordance with U.S. National Standards. TM 5–803–4 (Category Group 13, para 3–3) establishes criteria for marking and lighting obstructions to air navigation at airfields. FM 1–300 ensures that all standards for parking and lighting airfields facilities and obstacles to air navigation are maintained. These standards are equal to or exceed standards of FAR, Part 139.

5a. 139.49 Airport firefighting and rescue equipment and services.

5b. See AR 420–90 (para 1). AR 420–90 contains responsibilities, polices, standards, and procedures for fire prevention and protection.

6a. 139.51 Handling and storing hazardous articles and materials.

6b. See FM 1–300. AR 95–27 contains safety procedures for handling dangerous material such as chemical and biological material and ammunition.

7a. 139.53 Traffic and wind direction indicators.

7b. Applicable Army aviation facilities have control towers directing local traffic. They have radio communication with civilian and military aircraft. The Army does not specifically require traffic pattern indicators. TM 5–803–4 (para 557.32) lists Army codes for airfield facilities. Code 134–70 stands for lighted wind direction indicators. Each Army airfield and heliport will have at least one lighted wind direction indicator.

8a. 139–55 Emergency plans.

8b. Each Army facility is required to publish, maintain, and exercise periodically their various emergency plans. The plans should provide enough guidance to ensure immediate issue of vital emergency information to principal tenants and to all units and agencies. The following regulations apply: AR 95–87, AR 385–40, AR 385–95, and AR 500–60.

9a. 139.57 Self-inspection program.

9b. The U.S. Army requires constant inspection of AAFs from a variety of specialist and command levels. Adequate procedures have been developed for issuing pertinent information to interested personnel. AR 20–1 contains general guidelines at all levels. Also see FM 1–300. The U.S. Army Safety Center (USASC) Guide for Aviation Resources Management for Aircraft Mishap Prevention provides a specific checklist. The USASC publication, "Preparation of a System Safety Program Plan for Aviation System Development," also applies.

10a. 139.59 Ground vehicles.

10b. Army vehicles operating on active aviation facilities normally have two-way radio contact with the control tower. They also follow specifically marked routes, and

their movements are controlled by signals from the control tower. Also see TM 1–300.

11a. 139.61 Obstruction.

11b. TM 5–823–4 (apps H and I) is in accordance with the National Standards for Obstruction Marking. Also see FM 1–300.

12a. 139.63 Protection of NAVAIDs.

12b. AAFs are normally within the confines of, or next to, military installations that provide excellent protection and maximum security. Sites are selected by U.S. Engineers to ensure maximum performance of the navigation aid. Commanders ensure that the NAVAID's signal is not impaired by unnecessary construction.

13a. 139.65 Public protection.

13b. All U.S. Army installations are designed and maintained to provide security from inadvertent entry of persons or animals onto airfield operations areas. Airfield boundaries are normally marked or posted and patrolled by security police, usually around-the-clock. The following publications apply: AR 210–20, AR 380–25, and TM 5–803–4.

14a 139.67 Bird hazard reduction.

14b. Army aviation facilities are normally located within a major military installation. To date, no problem exists; however, each installation will continuously monitor its local bird hazard and request assistance if advisable.

15a. 139.69 Airport Condition Assessment and Reporting.

15b. See AR 95–14.

Subpart E—Operations

16a. 139.81 Operations rules: General.

16b. Mission requirements dictate that each installation be staffed and maintained properly according to Army standards. Pertinent directives ensure that these standards are equal to or exceed Part 139 of the FAR. Command inspection systems ensure compliance.

17a. 139.83 Maintenance of pavement areas.

17b. Details are in TM 5–803–4, TM 5–820–1, and TM 5–823–4.

18a. 139.85 Snow removal and positioning.

18b. At installations where snow and ice might become a hazard, AR 420–72 requires a snow removal and ice control plan. The plan will contain at least the following:

(1) An established priority for clearance of designated areas.

(2) Designation of equipment to be used.

(3) A listing of quantities and storage locations of materials to be used.

(4) Training material for equipment operators and supervisors.

(5) Provisions for round-the-clock notice of forecasted snow and ice storm intensities and duration.

19a. 139.87 Cleaning and replacing lighting items.

19b. See § 139.57, item 9 (self-inspection program).

20a. 139.89 Airport firefighting and rescue equipment and service.

20b. Details are in AR 95–26 and AR 420–90.

21a. 139.91 Self-inspection.

21b. See § 139.57, item 9, (self-inspection program).

22a. 139.93 Maintenance of approach and other imaginary surfaces.

22b. TM 5–803–4 (Chapter 8) contains criteria for determining obstructions to air navigation at AAFs. For terminal instrument procedures, the criteria in TM 95–226 apply. Guidance is also provided in section 77.28 of the FAR.

Subject: Fixed base operations at (Name of AAF), (Name of Army Installation), (City and State)
Thru: (Installation Commander)
Thru: (MACOM)
To: Director, USAASO
Attn: Airspace Support Division, Cameron Station, ALEX VA 22304–5050

1. The (name of the sponsor) requests approval to establish fixed base operation at (name of AAF).

2. Use of the AAF will be (reason request is being submitted).

3. Type of operation will be for (whether use is for general aviation, commercial aviation, both, or other).

4. The type and number of aircraft to be located on the AAF will include (type and number of aircraft).

5. Other facilities required include (facilities needed such as parking, hangar and terminal space, and land.

6. Services that will be required include (services required such as fuel, maintenance, and air traffic control).

7. Over the next 5 years, this operation will probably (estimate the growth and change of the operation).

8. Other information for your consideration includes (other information that applies).

Figure 2–1. Sample format for fixed base operation proposal.

Appendix D—Tables and Figures

TABLE 1–1.—LANDING, PARKING, AND STORAGE FEES

Authorized landing		
U.S. and possessions.	$0.50 per 100 pounds.	$10 minimum
Overseas	$1.70 per 100 pounds.	$10 minimum
Unauthorized landing		
MGTOW up to 12,500 pounds.	$200	
MGTOW 12,500 through 39,999.	$500	
MGTOW 40,000 pounds and over.	$1000	
Parking on ramp		
Up to 6 hours no charge:		
After 6 hours and for each 24 hours period or fraction thereof.	$15 per aircraft through 12,499 MGTOW.	
	$30 per aircraft 12,500 through 39,999.	
	$60 per aircraft 40,000 MGTOW and above.	
Storage in hanger		
For each 24-hour period and fraction thereof.	$30 per aircraft through 12,499 MGTOW.	
	$60 per aircraft 12,500 through 39,999 MGTOW.	
	$120 per aircraft 40,000 MGTOW and above.	

TABLE 1–1.—MINIMUM AIRCRAFT LIABILITY COVERAGE REQUIREMENTS, STATED IN DOLLARS, FOR PRIVATELY OWNED, BUSINESS, OR COMMERCIAL AIRCRAFT, INCLUDING PASSENGERS

	A	B	C	D	E
Rule No.	If the MGTOW is	then for	the minimum for bodily injury is	the minimum for property damage is	and the minimum liability for passengers is
1.	12,500 pounds and under	each person	$200,000		$200,000
		each accident	$600,000	$200,000	$200,000 X number of passenger seats
2.	Over 12,500 pounds	each person	$200,000		$200,000
		each accident	$2,000,000	$2,000,000	$200,000 X number of passenger seats
3.	5. FBO sponsor must carry a minimum of $6,000,000 insurance coverage.				

Figure 1–1. Instructions for developing an identification number

ASO 11–86–79 (Example of an identification number.)

* * * 79 indicates number of DD Form 2401's issued in current year.

* * * 86 * * * indicates calendar year.

* * * 11 * * * indicates category of user from Table 1–2.

ASO * * * indicates the three letter identifier of the approving authority.

Table 1–2

Short Term Users

Category: 1. U.S. or Foreign contractor subcontractor not included in § 557.24b.

Lowest level of approving authority: Installation commander.

User requirement responsibility Authorized to operate corporation, personal, or leased aircraft when fulfilling the terms of a U.S. Government contract or when conducting other Government business. Must provide (1) the contract, (2) a brief description of the work being done, and (3) the name, telephone number, and address of the government contracting officer. (For exclusive contract see para § 557.24.) (See Notes 1 and 3.)

Category: 2. Displays or demonstrated.

Lowest level of approving authority: Installation commander.

User requirement responsibility: Must be a contractural provision of fulfilling a request by a U.S. Government representative who has a procurement interest and authorization or certification responsibilities. DD Form 2401 should contain name, address, and telephone number of the requesting Government contracting officer (For exclusive contract, see § 557.24.) (See Note 1.)

Category: 3. U.S. military, personnel-active duty, National Guard, Reserve, or ROTC.

Lowest level of approving authority: Installation commander.

User requirement responsibility: Not members of military flying clubs. May be own or leased aircraft. Use must be to take part in authorized military functions or when on temporary duty (TDY). Must show some means of identification. National Guard. Reserve, and ROTC must provide commander's endorsement or TDY orders. (See Notes 1, 2, and 3.)

Category: 4. Federal civilian employees.

Lowest level of approving authority: Installation commander.

User requirement responsibility: Not members of military flying clubs. May be operating their own or leased aircraft. Use must be to take part in authorized military functions or when on TDY. Provide TDY orders or other official papers certifying requirement to use the AAF. (See Notes 1, 2, and 3.)

Category: 5. Retired U.S. Military.

Lowest level of approving authority: Installation commander.

User requirement responsibility: Includes Regular and Reserve personnel entitled to retired pay, who are not members of military flying clubs. Provide a copy of retirement orders or other authorized means of identification (See Notes 1, 2, and 3.)

Category: 6. News media.

Lowest level of approving authority: Installation commander.

User requirement responsibility: Pertains to when the news media representatives are gathering information about a U.S. Government operation or event. Will be authorized on a case-by-case basis when other modes of transportation will preclude meeting a publication schedule or when in the best interest of the U.S. Army. Provide proper news media credentials. (See Notes 1, 2, and 3.)

Category: 7. Member of Congress or heads of Federal departments or agencies.

Lowest level of approving authority: MACOM representative designated by commander.

User requirement responsibility: Pertains to aircraft either owned or personally chartered for members of Congress and heads of U.S. Federal departments of agencies other than the President or vice President. Any request received from or for member of Congress must be reported to the Chief of Legislative Liaison in accordance with AR 1–20. Use must be official Government business and nonpolitically oriented. Proper identification must be presented as required. (See Notes 1, 2, and 3.)

Category: 8. Civil fly-ins.

Lowest level of approving authority: Installation commander.

User requirement responsibility: Pertains to civilian aircraft invited to participate in any Army installation-sponsored activity being held at an AAF. This also includes those activities sponsored by local communities or groups and hosted by an Army installation. Applies only during the period of event. Provide validation as part of the event being sponsored or hosted by the Army installation. (See Notes 1, 2, and 3.)

Category: 9. Weather alternate.

Lowest level of approving authority: Director USAASO.

User requirement responsibility: Designated AAFs may be used by scheduled air cariers when unforecast weather conditions require a change from the original destination while in flight. Show on the flight plan and in the request for approval the AAF requested for use as a weather alternate. (See Notes 1 and 2.)

Category: 10. Major political candidates.

Lowest level of approving authority: Director, USAASO.

User requirement responsibility: Pertains to aircraft owned or chartered explicitly for a U.S. presidential candidate. Includes not more than one accompanying news media aircraft. The candidate must be one who is being provided Secret Service protection. All flight operations involving AAFs must be coordinated with the Director (USAASO), ATTN: Airspace Support Division, Cameron Station, ALEX VA 22304–5050, (telephone commercial (202) 274–7796/6304). Changes in schedule after normal duty hours must be reported to the Army Operational Center, Pentagon. Fuel may be sold on credit in accordance with AR 703–1. Candidates identification must be confirmed and Secret Service Security requirements must be satisfied. (See Notes 1, 2, and 3.)

Category: 11. Foreign aircraft operations

Lowest level of approving authority: Director, USAASO.

User requirement responsibility: Pertains to foreign civil or Government aircraft operating in a commercial mode. AAFs may be authorized as weather alternates for foreign aircraft in certain instances. Coordinates with the U.S. State Department, FAA, and DAMI–FL (§ 557.41.) Authorization to land at an AAF does not take the place of, or constitute, a diplomatic overflight clearance. Must have an ALAN. (See Notes 1, 2, and 3.)

Category 12. Miscellaneous.

Lowest level of approving authority: Director, USAASO.

User requirement responsibility: Other categories of users may be considered on a case-by-case basis. Examples include commercial development testing at Army facilities, commercial charters, scheduled air service, and private nonrevenue flights. Provide any agreements or documents indicating approval for landing. (See Notes 1, 2, and 3.)

Notes: 1. DD Form 2400, DD Form 2401, and DD Form 2402, or equivalent documentation, must be provided to the appropriate approving authority by the potential user. This information is used in determining whether or not to approve the request.

2. Landing fees are chargeable but may be waived by the approving authority in the best interest of the Army. (See § 557.34.)

3. Prior permission to land at the destination AAF may be required by the AAF commander even though the operator has an approved DD Form 2401.

TABLE 3–1.—[Landing, Parking, and Storage Fees]

	Authorized landing	
U.S. and possessions.	$0.50 per 100 pounds.	$10 minimum
Overseas	1.70 per 100 pounds.	$10 minimum

TABLE 3–1.—[Landing, Parking, and Storage Fees]—Continued

	Unauthorized landing
MGTOW up to 12,500 pounds.	$200
MGTOW 12,500 through 39,999	$500
MGTOW 40,000 pounds and over.	$1000
	Parking on ramp
Up to 6 hours no charge:	
After 6 hours and for each 24 period or fraction thereof.	$15 per aircraft through 12,499 MGTOW.
	$30 per aircraft 12,500 through 39,999.
	$60 per aircraft 40,000 MGTOW and above.
	Storage in hanger
For each 24-hour period and fraction thereof.	$30 per aircraft through 12,499 MGTOW.
	$60 per aircraft 12,500 through 39,999 MGTOW.
	$120 per aircraft 40,000 MGTOW and above.

Table 3–2

Responsibilities related to unapproved landings.

Required action: Provide help or emergencies. Responsible person: Instl cdr.

Required action: Inform the aircraft operator of his or her responsibility to report the incident to FAA. Responsible person: Instl cdr.

Required action: Report the incident to the nearest FAA General Aviation District Office or Flight Standards District Office. Responsible person; Instl cdr.

Required action: Explain why the unapproved landing took place. (A written record of the explanation will be kept on file.) Responsible person: A/C opr.

Required action: Prepare a report of landing by non-DOD aircraft and send a copy to the Director, USAASO. Responsible person; A/C opr.

Required action: complete and sign a DD Form 2402. Responsible person: A/C opr.

Required action: Provide information on insurance coverage. Responsible person: A/C opr.

Required action: Determine and collect cost of fees due U.S. Government responsible person: Instl cdr.

Required action: Overseas, advise the nearest U.S. Defense Attached Office (USDAO.) Responsible person: Instl cdr.

Appendix E— Glossary

Section I

Abbreviations

AAF

Army airfield

ACSI

Assistant Chief of Staff for Intelligence

ALAN

Aircraft landing authorization number

ATC

Air traffic control

CAP
Civil air patrol
COE
Chief of Engineers
DA
Department of the Army
ODCSOPS
Deputy Chief of Staff for Operations and Plans
DOD
Department of Defense
EA
Environmental assessment
EIS
Environmental Impact Statement
FAA
Federal Aviation Administration
FAO
Finance and accounting officer
FBO
Fixed base operator
IFR
Instrument flight rules
LOA
Letter of agreement
MACOM
Major Army command
MGTOW
Mean gross takeoff weight
NAS
National Airspace System
NAVAID
Navigational aid
PPR
Prior permission required
TDY
Temporary duty
USAASO
U.S. Army Aeronautical Services Office
USAF
U.S. Air Force
USASC
U.S. Army Safety Center
USAR
U.S. Army Reserve
USGC
U.S. Coast Guard
USDAO
U.S. Defense Attache Office

Section II

Terms
Aircraft
Any contrivance or device used or intended to be used for flight in the air.
Airfield
Any runway or landing area designed for use by aircraft.
Approval authority
The individual or agency having authority to approve landing at AAFs by nonexempt aircraft.
Army airfield (AAF)
An airfield owned or operated by the Army.
Authorized buyer letter
A letter of agreement that qualified operators must file with the Army in order to purchase aviation Petroleum Oils and Lubricants on credit.
Bailed aircraft
U.S. Government-owned aircraft delivered to a government contractor for a use directly related to a contract.
Certificate of Insurance
A certificate that describes the amount of third-party insurance carried by the user, aircraft owner, or aircraft operator.
Civil aircraft
Army U.S. or foreign registered aircraft owned by private individuals, companies, corporations, or foreign governments that are operated for private or commercial aviation purposes.
Civil aircraft landing permit (DD Form 2401)
An application that, when validated by the appropriate approving authority, permits an aircraft operator to use an AAF under the terms of this regulation.
Civil aviation
All civil aircraft of any national registry, including commercial, business, and general aviation.
Civil use
Use of an AAF by a civil operator.
Emergency landing
A landing resulting from an inflight emergency.
Exempt aircraft
Aircraft that do not require a CALP or other authorization to land at an AAF.
Government aircraft
Aircraft owned, operated exclusively by or on behalf of, or controlled by any department or agency of any government or any aircraft for which that government has liability responsibility.
Civil use
Use of an AAF by a civil operator.
Emergency landing
A landing resulting from an inflight emergency.
Exempt aircraft
Aircraft that do not require a CALP or other authorization to land at an AAF.
Government aircraft
Aircraft owned, operated exclusively by or on behalf of, or controlled by any department or agency of any government or any aircraft for which that government has liability responsibility.
Hold harmless agereement (DD Form 2402)
An agreement filled out by the user, that obsolves the U.S. Government from all liabilities incurred in connection with civil aircraft use of an AAF.
Inflight emergency
A situation developed in flight that makes continued flight hazardous to the crew or passengers or both.
Joint use
Use of an AAF by a local community of foreign government. A specific written agreement will detail all specific conditions of such use.
Joint-use AAF
An AAF where a specific written agreement exists between the Army and a local, State, or foreign agency for use of any of the AAF.
Loaned aircraft
A U.S. Government-owned aircraft delivered to another portion of the U.S. Government or to a military service of any government.
Nonexempt aircraft
All aircraft other than exempt aircraft.
Official government business
Activity associated with support of U.S. Army, DOD, or other U.S. Federal agencies at or near an AAF.
Outgrant
Authority to use military property under existing statutes. May be in the form of leases, licenses, permits, and so forth.
Unapproved landing
A landing at an AAF by a nonexempt aircraft without prior permission or approval.
User
An operator of nonexempt aircraft operating at an AAF.
Weather alternate
An AAF used as a weather alternate as prescribed by FFRs or other directives.

John O. Roach II,

Army Liaison Officer, with the Federal Register

[FR Doc. 87-1473 Filed 2-2-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD14-87-01]

Anchorage Ground; Island of Tinian, Commonwealth of the Northern Marianas Islands

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish an explosives anchorage around naval anchorages "A" and "B" northwest of Tinian Harbor. Military Sealift Command ships loaded with explosives will be using these moorings on a regular basis. The purpose of the regulation is to provide a safe separation between vessels loaded with explosives and other vessels at anchor.

DATES: Comments must be received on or before March 20, 1987.

ADDRESSES: Comments should be mailed to Commander (oan), Fourteenth Coast Guard District, Prince Kalanianole Federal Building, 300 Ala Moana Blvd., Honolulu, Hawaii 96850-4982. The comments and other materials referenced in this notice will be available for inspection and copying at the PJKK Federal Building, 300 Ala Moana Blvd., Room 9139, Honolulu, Hawaii. Normal office hours are between 6:30 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT. M. D. West, (808) 541-2315.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting

comments should include their names and addresses, identify this notice (CGD14–87–01) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LT M. D. WEST, project officer, Fourteenth Coast Guard District Aids to Navigation Office, and LT M. G. FETROW, project attorney, Fourteenth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The United States Navy has established fleet moorings A and B northwest of Tinian Harbor on the Island of Tinian, CNMI. Military Sealift Command ships carrying explosives in amounts up to 1.6 million pounds will use the anchorages on a regular basis. The U.S. Coast Guard has established a security zone around both fleet moorings. This regulation is being proposed to provide safe separation distance between explosive laden vessels and other vessels at anchor beyond the area provided by the security zone. This regulation was initiated at the request of the U.S. Navy. The District Engineer, U.S. Army Corps of Engineers has been contacted and has no objection to the issuance of this regulation. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of 33 CFR Part 110.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under E.O. 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The fleet moorings have been established in an open roadstead off the Island of Tinian. The only regular vessel traffic in the area consists of small vessels transiting the area or involved in fishing. Passage of these vessels (less than 500 gross tons) will be unaffected by the regulation. Ample anchorage area with good holding grounds are located outside the anchorage grounds. The regulation does not restrict access to any fairway or channel, or limit access to any facility or area previously accessible to vessels affected by the regulation.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.239 is added to read as follows:

§ 110.339 Island of Tinian, CNMI.

(a) The anchorage grounds (based on 1944 Saipan Datum);

(1) Explosives Anchorage A: A circular area intersecting the shoreline having a radius of 1,900 yards centered at latitude 14°58′57.0″ N, longitude 145°35′40.8″ E.

(2) Explosives Anchorage B: A circular area intersecting the shoreline having a radius of 1,900 yards centered at latitude 14°58′15.9″ N, longitude 145°35′54.8″ E.

(b) The regulations: Explosives Anchorages A and B; with the exception of explosive laden navel vessels at explosives anchorage A and B, no vessel may anchor within these areas without permission of the Captain of the Port. No vessel or more than 500 gross tons displacement may enter these areas except for the purpose of anchoring in accordance with this section.

Dated: January 21, 1987

Alfred P. Manning, Jr. RADM,

U.S Coast Guard, Commander, 14th Coast Guard District.

[FR Doc. 87–2066 Filed 2–2–87; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Rocky Mountain National Park, CO; Mountain Climbing and Winter Backcountry Trip Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking is a deletion of registration and check out requirements for technical climbing and overnight winter backcountry trips in Rocky Mountain National Park. The existing regulations, which require technical climbers and overnight winter backcountry users to register and check out after completion of their activity were intended to provide information necessary to initiate search and rescue responses. Actual experience over the years has shown that the intended purpose of this regulation has not been achieved. Nearly all search and rescue responses have been generated by reports from sources other than the check out system. Instead of aiding rescuers, these regulations have burdened the park rangers with the task of checking on countless cases of climbers and backpackers who have failed to check out. The deletion of this regulation has been supported by the climbing and backpacking community for over two years. The deletion of this regulation will not result in the reduction of visitor protection services provided by park personnel.

DATES: Written comments will be accepted through March 5, 1987.

ADDRESS: Comments should be addressed to: Superintendent, Rocky Mountain National Park, Estes Park, CO 80517.

FOR FURTHER INFORMATION CONTACT: David J. Essex, Chief Park Ranger, Rocky Mountain National Park, Estes Park, CO 80517, Telephone: 303–586–2317.

SUPPLEMENTARY INFORMATION:

Background

The existing National Park Service (NPS) special regulations that pertain to mountain climbing and winter backcounty trips are codified as 36 CFR 7.7 (d) and (e). They require all technical climbers and all winter overnight backcountry users to register or check in prior to undertaking these activities and to check out with a ranger upon completion of the activity. The original intent was to provide park search and rescue personnel with the knowledge

that a park user was in essence overdue from a potentially dangerous activity. In reality, almost all perceived overdue parties concerned climbers and backcountry users failing to properly check out. In addition, a portion of the climbing community opposed the registration system and deliberately violated the conditions of the system. The net effect of the regulations was a combination of non-compliance, failure to check out, failure a contact a ranger in a timely manner and wasted time and energy on the part of the park staff administering the system. After a reasonable period of time working with these restrictions, it was determined that they were not achieving their original purpose of saving lives. In reality, almost all park search and rescue efforts were the result of initial reports by climbing partners, other park backcountry users, friend or relatives. The registration forms themselves were not the basis for search and rescue responses. For over two years, the climbing and backpacking community has supported the deletion of these regulations.

The NPS believes the deletion of these rules will make the management of mountain climbing and winter backcountry trips more consistent with the practices of both state and federal agencies whose lands are contiguous with Rocky Mountain National Park. Overnight backcountry trips will continue to be regulated by 36 CFR 2.10 Camping and Food Storage.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking.

The Rocky Mountain National Park staff has contacted the Colorado Mountain Club, local climbing speciality shops, and the local communities regarding this rulemaking.

Drafting Information

The primary authors of this rulemaking are David J. Essex, Chief Park Ranger, and James L. Protto, South District Ranger, Rocky Mountain National Park.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule within the meaning of Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rulemaking has no economic effect.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental Regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National parks; Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter 1 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 462(k); § 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

§ 7.7 [Amended]

2. By amending § 7.7 as follows:

a. By removing paragraphs (d) and (e).

b. By redesignating paragraphs (f) as (d), (g) as (e) and (h) as (f).

c. By amending the cross reference in paragraph (b) now reading "paragraph (g)" to read "paragraph (e)".

d. By amending the cross reference in newly redesignated paragraph (f)(4) now reading "paragraph (h)(5)" to read "paragraph (f)(5)".

Dated: January 6, 1987.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–2009 Filed 2–2–87; 8:45 am]

BILLING CODE 4310-70-M

VETERANS ADMINISTRATION

38 CFR Part 3

Medical Reports as Informal Claims/ Recoupment of Separation Pay

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendments.

SUMMARY: The Veterans Administration (VA) is proposing to amend its adjudication regulations concerning the acceptability of certain medical reports as informal claims and the withholding of compensation to recoup separation pay and readjustment pay. These amendments are necessary to implement certain provisions of the Defense Officer Personnel Management Act and two unpublished opinions of the VA General Counsel. The intended effect of these amendments is to clarify the circumstances under which medical reports may constitute informal claims for benefits and to prevent duplication of payments of compensation and military separation and readjustment pay.

DATES: Comments must be received on or before March 3, 1987. These changes are proposed to be effective 30 days after the date of publication of the final rules with the exception of the amendment to § 3.700(a) (2)(iii) and (5) concerning recoupment of separation pay which is proposed to be effective September 15, 1981, as provided by law.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until March 16, 1987.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233–3005.

SUPPLEMENTARY INFORMATION: The Defense Officer Personnel Management Act, Pub. L. 96–513, created a new category of payment upon involuntary discharge or release from active duty called separation pay under 10 U.S.C. 1174. That same law also required the VA to withhold compensation that was payable based on disabilities that were incurred or aggravated during the same period of service until the full amount of separation pay had been recouped. We propose to implement this law by appropriately amending 38 CFR 3.700.

In a related matter the VA General Counsel has held that while compensation must be withheld to recoup 75 percent of readjustment pay authorized under 10 U.S.C. 687, where entitlement to disability compensation was established prior to September 15, 1981, readjustment pay authorized under 10 U.S.C. 3814(a) was not subject to recoupment through withholding of disability compensation, entitlement to which was established prior to September 15, 1981. Where entitlement to VA compensation was established on or after September 15, 1981, the total amount of separation pay awarded under section 1174(h)(2) of Title 10, United States Code, or severance pay or readjustment pay under any other provision of law is subject to recoupment through withholding of disability compensation. This decision will also be implemented by appropriately amending 38 CFR 3.700.

In an unpublished opinion, the VA General Counsel has also clarified the circumstances under which certain medical reports may be accepted as informal claims. Under 38 CFR 3.157(b) certain examination or treatment reports may be accepted as informal claims and in some cases the date of examination, treatment or admission may be considered the date of receipt of the claim. To be so considered, however, the VA General Counsel has held that the reports cited in 38 CFR 3.157(b)(1) must relate to examination or treatment of a disability for which service-connection has already been established or that a claim specifying the benefit sought must be received within one year from the date of such examination, treatment or hospitalization. We propose to add clarifying language to this section which is consistent with that opinion.

The Administrator hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: January 8, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 3, Adjudication, is proposed to be amended as follows:

PART 3—[AMENDED]

1. The authority citation for Part 3, Subpart A, continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210.

2. In § 3.155, paragraph (c) is revised to read as follows:

§ 3.155 Informal claims.

* * * * *

(c) When a claim has been filed which meets the requirements of § 3.151 or § 3.152, an informal request for increase or reopening will be accepted as a claim.

§ 3.157 [Amended]

3. In § 3.157(a), remove the words "Pub. L. 87–825" from the citation at the end of the paragraph, so that the complete citation reads "(38 U.S.C. 3010(a))".

4. In § 3.157, paragraph (b)(1) is revised to read as follows:

§ 3.157 Report of examination or hospitalization as claim for increase or to reopen.

* * * * *

(b) * * *

(1) *Report of examination or hospitalization by VA or uniformed services.* The date of outpatient or hospital examination or date of admission to a VA or uniformed services hospital will be accepted as the date of receipt of a claim. The date of a uniformed service examination which is the basis for granting severance pay to a former member of the Armed Forces on the temporary disability retired list will be accepted as the date of receipt of claim. The date of admission to a non-VA hospital where a veteran was maintained at VA expense will be accepted as the date of receipt of a claim, if VA maintenance was previously authorized; but if VA maintenance was authorized subsequent to admission, the date the VA received notice of admission will be accepted. The provisions of this paragraph apply only when such reports relate to examination or treatment of a disability for which service-connection has previously been established or when a claim specifying the benefit sought is received within one year from the date of such examination, treatment or hospital admission. (38 U.S.C. 210(c))

5. In § 3.700, paragraph (a)(2) is revised, a citation is added to paragraph (a)(3) and paragraph (a)(5) is added to read as follows:

§ 3.700 General.

* * * * *

(a) * * *

(2) *Lump-sum readjustment pay.* (i) Where entitlement to disability compensation was established prior to September 15, 1981, a veteran who has received a lump-sum readjustment payment under former 10 U.S.C. 687 (as in effect on September 14, 1981) may receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of lump-sum readjustment payment subject to deduction of an amount equal to 75 percent of the amount received, as readjustment payment. (38 U.S.C. 210(c))

(ii) Readjustment pay authorized under former 10 U.S.C. 3814(a) is not subject to recoupment through withholding of disability compensation, entitlement to which was established prior to September 15, 1981. (38 U.S.C. 210(c))

(iii) where entitlement to disability compensation was established on or after September 15, 1981, a veteran who has received a lump-sum readjustment payment may receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of the lump-sum readjustment payment, subject to

recoupment of the total amount of the readjustment payment. (38 U.S.C. 210(c))

(iv) The receipt of readjustment pay does not affect the payment of disability compensation based on a subsequent period of service. Compensation payable for service-connected disability incurred or aggravated in a subsequent period of service will not be reduced for the purpose of offsetting readjustment pay based on a prior period of service. (10 U.S.C. 1174(h)(2))

(3) *Severance pay.* * * * (10 U.S.C. 1212(c)).

* * * * *

(5) *Separation pay.* (i) A veteran who has received separation pay may receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of separation pay subject to recoupment of the total amount received as separation pay.

(ii) The receipt of separation pay does not affect the payment of disability compensation based on a subsequent period of service. Compensation payable for service-connected disability incurred or aggravated in a subsequent period of service will not be reduced for the purpose of offsetting separation pay based on a prior period of service. (10 U.S.C. 1174)

* * * * *

[FR Doc. 87-1973 Filed 2-2-87; 8:45 am]
BILLING CODE 8320-01-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Increase in Rates Payable in the Education Assistance Test Program

AGENCY: Veterans Administration and Department of Defense.

ACTION: Proposed regulations.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Education Assistance Test Program shall be adjusted annually based upon the average actual cost of attendance at public institutions of higher education in the 12-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that these rates should be increased by 6.1 percent. The regulations dealing with these rates are adjusted accordingly.

DATES: Comments must be received on or before March 3, 1987. It is proposed to make this rate increase effective October 1, 1986.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 of the above address between the hours of 8 a.m. to 4:30 p.m. Monday through Friday (except holidays) until March 16, 1987.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2092.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the 12-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education and determined that these costs have increased 6.1 percent. This proposal adjusts 38 CFR 21.5820 and 21.5822 so that all rates which appear in them are based on an annual limit on educational assistance of $1560, and a monthly payment of subsistence allowance for full-time students of $389.

It is proposed to make these increases effective October 1, 1986. Retroactive effect is warranted because these changes are liberalizing, and because they are interpretative rules which implement and construe the meaning of a law. Moreover, there is good cause for a retroactive effective date of October 1, 1986. Such a date facilitates implementation of 10 U.S.C. 2145 which requires annual adjustments in educational assistance.

The Veterans Administration (VA) and the Department of Defense have determined that these proposed amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs and the Secretary of Defense have certified that these proposed amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because these proposed amended regulations make adjustments required by law, and because they affect only rates payable to individuals. No regulatory, administrative, or paperwork burdens are imposed on any type of small entities.

There is no Catalog of Federal Domestic Assistance number for the program affected by these proposed amended regulations.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 17, 1986.

Thomas K. Turnage,

Administrator.

A. Lukeman,

Major General, USMC, Deputy Assistant Secretary of Defense.

December 10, 1986.

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

1. In § 21.5820 the introductory text of paragraph (b), paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B), and paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B) are revised to read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) *Amount of educational assistance.* The amount of educational assistance may not exceed $1,560 per standard academic year, adjusted annually by regulation. (10 U.S.C. 2143)

(1) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by § 173.33 for a full-time student or by $86.67 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $5.77 for a full-

time student or by $2.88 for a part-time student; and (10 U.S.C. 2143)

* * * * *

(2) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by § 173.33 for a full-time student or by $86.67 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $5.77 for a full-time student or by $2.88 for a part-time student; and (10 U.S.C. 2143)

* * * * *

2. In § 21.5822 paragraphs (b)(1)(i) and (b)(1)(ii) and paragraphs (b)(2)(i) and (b)(2)(ii) are revised to read as follows:

§ 21.5822 Subsistence allowance.

* * * * *

(b) * * *

(1) * * *

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is $389 per month, adjusted annually by regulation.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is $194.50 per month. (10 U.S.C. 2144)

* * * * *

(2) * * *

(i) The VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time by dividing $389 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(ii) The VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than a full-time basis by dividing $194.50 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day. (10 U.S.C. 2144)

* * * * *

[FR Doc. 87-1974 Filed 2-2-87; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6905]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Proposal rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2751.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L 90-448)), 42 U.S. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regualtions, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricker requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premimum rates for new buildings and their contents and for the second layer of insruance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entites. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

Authority: 42 U.S.C. 4001 et seq., Reorg. Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
California	Carlsbad (City), San Diego County.	Buena Vista Creek	At Jefferson Street Bridge	None	*15
			50 feet upstream of Haymar Drive Bridge	None	*25
			500 feet upstream of El Camino Real Bridge	None	*29

Maps are available for review at the Engineering Department, 1200 Elm Street, Carlsbad, California 92008.

Send Comments to the Honorable Mary Casler, Mayor City of Carlsbad, 1200 Elm Street, Carlsbad, California 92008.

California	Nevada County (Uninc. Areas)	Donner Creek	1,680 feet downstream of confluence with Cold Creek	*5,898	*5,898

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			40 feet upstream from the Center of Cold Stream Road.	*5,923	*5,919
			430 feet upstream of Cold Stream Road	*5,924	*5,921
		Donner Lake	At Intersection of South Shore and Cedar Drives	*5,942	*5,938
		Summit Creek	At mouth (Donner Lake)	*5,942	*5,938
			2,740 feet upstream of Summit Creek Drive	*6,108	*6,106
Maps are available for inspection at the Planning Department. 700 Zion Street, Nevada City, California.					
Send comments to the Honorable Crawford Bost, Chairman, Nevada County Board of Superviosors, 201 Church Street, Nevada City, California 95959.					
Illinois	Village of Gardner Grundy County.	Illinois Central Gulf Railroad Ditch	Just upstream of State Highway 53	*585	*583
			Just downstream of Sherman Street overpass	*589	*589
Maps available for inspection at the Village Hall, P.O. Box 545, Major and Center Streets, Gardner, Illinois.					
Send comments to the Honorable Raymond Serena, Mayor, Village of Gardner, Village Hall, P.O. Box 545, Major and Center Streets, Gardner, Illinois 60424.					
Minnesota	City of Rochester, Olmsted County.	Cascade Creek Split Flow	About 160 feet upstream of confluence with Cascade Creek.	None	*1,000
			About 670 feet upsteam of confluence with Cascade Creek.	None	*1,002
			Just upstream of U.S. Highway 52	None	*1,006
Maps available for inspection at the Department of Planning and Zoning, 1421 3rd Avenue, SW., Rochester, Minnesota.					
Send comments to The Honorable Chuck Hazama, Mayor, City of Rochester, 224 1st Avenue SW., Rochester, Minnesota 55902.					
New Jersey	Belleville, town, Essex County	Second River	Upstream side of Mills Ridge Street at the upstream corporate limits.	*99	*104
Maps available for inspection at the Town Engineering Department, 383 Washington Avenue, Belleville, New Jersey.					
Send comments to The Honorable Michael V. Marotti, Mayor of the Town of Belleville, Essex County, 152 Washington Avenue, Belleville, New Jersey 07019					
New Jersey	Bloomfield, Township, Essex County.	Third River	Downstream corporate limits	*81	*82
			Upstream side of Garden State Parkway	*102	*102
			Confluence with Third River Tributary No. 1	*140	*139
			Downstream side of Broughton Avenue	*160	*160
			Upstream corporate limits	*176	*184
			Confluence with the Third River	*140	*139
		Third River Tributary No 1	Approximately .4 mile upstream of the confluence with Third River.	*144	*144
			Downstream corporate limits	*100	*104
		Second River	Upstream side of Bloomfield Avenue	*114	*117
			Upstream side of Glenwood Avenue	*120	*124
			Upstream corporate limits	*129	*132
			Confluence with Second River	*116	*118
		Second River Tributary	Upstream corporate limits	*129	*126
Maps available for inspection at the Minicipal Building, Minicipal Plaza, Bloomfield, New Jersey.					
Send comments to The Honorable John W. Kinder, Mayor of the Township of Bloomfield, Essex County, Minicipal Building, Minicipal Plaza, Bloomfield, New Jersey 07003-3487.					
New Jersey	Hopewell, Township, Mercer County	Delaware River	Downstream corporate limits	*40	*48
			Approximately .5 mile upstream of confluence of Moore Creek.	*62	*61
			Upstream corporate limits	*64	*65
			Approximately .3 mile downstream of Old Mill Road	*141	*142
		Stony Brook	At confluence of Baldwins Creek	*152	*153
			Approximately 300 feet upstream of CONRAIL	*170	*171
			Upstream corporate limits	*206	*207
			Just downstream of confluence with Delaware River	*49	*48
		Jacobs Creek	Approximately 400 feet downstream of confluence of Ewing Creek.	*65	*66
			At Jacobs Creek Road	*70	*68
		Ewing Creek	Approximately 250 feet upstream of Nursery Road	*120	*121
			Approximately 650 feet upstream of Scotch Road	*150	*149
			Approximately 75 feet upstream of Scotch Road	None	*154
		Beden Brook	Approximately 950 feet upstream of Province Line Road.	*115	*117
			Upstream side of Aunt Molly Road		
			Approximately 300 feet upstream of Mount-Rose-Hopewell Road.	*125	*127
			Approximately 600 feet downstream of upstream corporate limits.	*165	*163
Maps available for inspection at the Hopewell Township Municipal Building, Route 546 & Scotch Road, Titusville, New Jersey.					
Send comments to The Honorable James Davy, Administrator of the Township of Hopewell, Mercer County, Route 546 & Scotch Road, Titusville, New Jersey 08560.					
New Jersey	Lawrence, Township, Mercer County.	Stony Brook	At downstream corporate limits	*115	*114
			Approximately 380 feet upstream of dam	*131	*130
			At upstream corporate limits	*133	*135
Maps available for inspection at the Town Hall, 2207 Lawrence Road, Lawrenceville, New Jersey.					
Send comments to The Honorable Barry Larson, Manager of the Township of Lawrence, Mercer County, 2207 Lawrence Road, Lawrenceville, New Jersey 08618.					
New Jersey	Montclair, Township, Essex County.	Third River	Downstream corporate limits	*196	*198
			Upstream corporate limits	*219	*218
		Second River	Downstream corporate limits	*191	*192

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Upstream side of Willow Street	*249	*251
			Downstream side of Park Street	*277	*279
		Nishuane Brook	Downstream corporate limits	*164	*166
			Upstream side of Madison Avenue	*234	*235

Maps available for inspection at the Planning Department, 205 Claremont Avenue, Montclair, New Jersey.

Send comments to The Honorable Bertrand Kendall, manager of the Township of Montclair, Essex County, 205 Claremont Avenue, Montclair, New Jersey 07042.

New Jersey	Mount Laurel, Township, Burlington County.	North Branch Pennsauken Creek	Approximately 1,000 feet downstream of Union Mills Road.	*33	*34

Maps available for inspection at the Mount Laurel Municipal Building, 100 North Mount Laurel Road, Mount Laurel, New Jersey.

Send comments to The Honorable John F. Heimmer, Mayor of the Township of Mount Laurel, Burlington County, 100 North Mount Laurel Road, Mount Laurel, New Jersey 08054.

New Jersey	Pompton Lakes, Borough, Passaic County.	Wanaque River	Upstream side of Riverdale Boulevard	None	*190
			Approximately 400 feet upstream of Paterson-Hamburg Turnpike.	None	*198
			Downstream side of Wanaque Avenue	None	*208

Maps available for inspection at the Pompton Lakes Municipal Building, 25 Lenxo Avenue, Pompton Lakes, New Jersey.

Send comments to The Honorable Donald Krom, Administrator for the Borough of Pompton Lakes, Passaic County, 25 Lenox Avenue Pompton Lakes, New Jersey 07442.

New York	Glenville, Town, Schenectady County.	Alplaus Kill	Upstream side of Glenridge Road	*230	*228
			Upstream side of Delaware and Hudson Railroad	*232	*231

Maps available for inspection at the Town Hall, 18 Glenridge Road, Glenville, New York.

Send comments to The Honorable William W. Baird, Supervisor of the Town of Glenville, Schenectady County, 18 Glenridge Road, Glenville, New York 12302.

Ohio	Village of Groveport, Franklin County.	Blacklick Creek	About 1.2 miles downstream of Hamilton Road	*None	*729
			About 500 feet upstream of U.S. Route 33	*None	*746
		Tributary J	At mouth About 2,150 feet upstream of mouth	*740	*740

Maps available for inspection at the Zoning Commission, 650 Cherry Street, Groveport, Ohio.

Send comments to The Honorable Harold Carley, Mayor, Village of Groveport, 605 Cherry Street, Groveport, Ohio 43125.

Ohio	Unincorporated Areas of Warren County.	Bear Run	At mouth	*None	*608
			About 800 feet downstream of State Route 3	*607	*608
		Carlisle Drain	At mouth	*None	*665
			Just upstream of Jill Lane	*None	*669
		Little Miami River	About 2,200 feet downstream of the confluence of Ertel Run.	*592	*592
			About 500 feet upstream of State Route 48	*627	*627
			Just downstream of Stubbs Mill Road	*None	*641
			Just upstream of Interstate 71	*None	*684
			Just downstream of County Highway 30	*None	*709
			Just downstream of State Route 73	*722	*722
			About 1,100 feet upstream of County Boundary	*None	*745
		Twin Creek	At mouth	*664	*664
			Just downstream of Franklin-Trenton Road	*669	*667
			Just upstream of Chessie System	*674	*674

Maps available for inspection at the Building and Zoning Department, Warren County Administration Building, 320 East Silver Street, Lebanon, Ohio.

Send comments to The Honorable George Terwilleger, President, Board of County Commissioners, Warren County Administration Building, 320 East Silver Street, Lebanon, Ohio 45036.

Pennsylvania	Neshannock Township, Lawrence County.	Shenango River	At downstream corporate limits	*816	*805
			At upstream side of State Route 60	*818	*806
			At upstream side of Pulaski Road	*818	*807
			At upstream corporate limits	*819	*809

Maps available for inspection at the Neshannock Township Building, 3131 Mercer Road, New Castle, Pennsylvania.

Send comments to The Honorable John Carter, Chairman of the Board of Supervisors of the Township of Neshannock, Lawrence County, 3131 Mercer Road, New Castle, Pennsylvania 16105.

Pennsylvania	Reading, City Berks County	Schuylkill River	2,540 feet downstream of CONRAIL bridge	*219	*218
			Downstream side of CONRAIL bridge	*224	*223
			1,130 feet upstream of Warren Street Bypass bridge	*226	*225
			2,030 feet upstream of Warren Street Bypass bridge	*226	*225
			2,630 feet upstream of Warren Street Bypass bridge	*226	*227
			Upstream corporate limits	*226	*227
		Tulpehocken Creek	0.19 mile upstream of the mouth	*215	*214
			Upstream corporate limits	*216	*214

Maps available for inspection at the City Hall, 815 Washington Street, Reading, Pennsylvania.

Send comments to The Honorable Karen A. Miller, Mayor of the City of Reading, Berks County, City Hall, 815 Washington Street, Reading, Pennsylvania 19601-3690.

South Carolina	Unincorporated Areas of Richland County.	Little Jackson Creek	At mouth	*205	*204
			Just upstream of Two Notch Road	*219	*211
			About 400 feet downstream of Creekwood Avenue	*226	*220
			Just upstream of Creekwood Avenue	*227	*225
			About 1,950 feet downstream of Rabon Road	*243	*243
		Lightwood Knot Branch	At confluence with Little Jackson Creek	*221	*214
			Just downstream of Interstate 20	*221	*221

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the County Administrator's Office, Richland County, P.O. Box 192, Columbia, South Carolina.					
Send comments to The Honorable Dean Hunter, Jr., County Administrator, Richland County, P.O. Box 192, Columbia, South Carolina 29202.					
Tennessee	City of Pigeon Forge, Sevier County.	West Prong Little Pigeon River	About 0.55 mile downstream of U.S. Highway 441	*968	*968
			Just upstream of U.S. Highway 441	*977	*978
			Just downstream of Private Bridge	*982	*982
Maps available for inspection at the Public Work Director's Office, P.O. Box 1066, Pigeon Forge, Tennessee 37863.					
Send comments to The Honorable Bill Maples, Mayor, City of Pigeon Forge, P.O. Box 1066, Pigeon Forge, Tennessee 37863.					
Texas	Austin, City, Travis County	Tannehill Branch	Confluence with Boggy Creek North	*450	*450
			At downstream side of Springdale Road	*473	*469
			At downstream side of Oak Springs Drive	*477	*475
			At downstream side of Martin Luther King Boulevard	*514	*510
			At upstream side of Manor Road	*548	*547
			At downstream side of Old Manor Road	*556	*554
			At downstream side of Cameron Road	*630	*629
			At downstream side of Bennett Avenue	None	*643
			At downstream side of Helen Avenue	None	*646
			At downstream side of Koeng Lane	None	*661
		Givens Park Tributary 1 (GP-1)	At confluence with Tannehill Branch	None	*483
			At downstream side of 12th Street	None	*488
			At downstream side of Greenwood Avenue	None	*504
			At downstream side of Martin Luther King Boulevard	None	*532
			Approximately 370 feet upstream of Manor Road	None	*558
		Given Park Tributary 2 (GP-2)	At confluence with GP-1	None	*493
			At downstream side of Martin Luther King Boulevard	None	*529
			Approximately 2,200 feet upstream of Martin Luther King Boulevard.	None	*570
		West Tributary 3 (WT-3)	At confluence with Tannehill Branch	None	*504
			At downstream side of Martin Luther King Boulevard	None	*507
			At downstream side of Manor Road	None	*547
Maps available for inspection at the Department of Public Works, One Texas Center, 505 Barton Springs Road, Austin, Texas.					
Send comments to the Honorable Frank Coolsey, Mayor of the City of Austin, Travis County, P.O. Box 1088, Austin, Texas 78767-8839.					
Texas	Comal County Unincorporated Areas.	Cibolo Creek	Approximately 1,100 feet upstream at Ralph Fair Road	*1,252	*1,253
			At confluence of Postoak Creek	*1,255	*1,257
			At confluence of Balcones Creek	*1,267	*1,270
			Approximately 510 feet upstream of County boundary	*1,268	*1,271
		Postoak Creek	At confluence with Cibolo Creek	None	*1,257
			At upstream County boundary	None	*1,272
Maps available for inspection at the Comal County Unit Road System, Floodplain Administrator's Office, Highway 46 West, New Braunfels, Texas.					
Send comments to the Honorable Fred Clark, Comal County Judge, 100 Main Plaza, Room 114, New Braunfels, Texas 71830.					
Texas	Duncanville, City, Dallas County	Tenmile Creek	Approximately 150 feet upstream of confluence with Horne Branch.	*618	*619
			Approximately 290 feet upstream of Duncanville Road	*623	*624
			Approximately 100 feet downstream of Duncanville Road.	*620	*621
		Horne Branch	Approximately 500 feet upstream of confluence with Tenmile Creek.	*619	*618
			Approximately 1,300 feet upstream of confluence with Tenmile Creek.	*624	*623
Maps available for inspection at the Director of Public Works, 100 East Center Street, Duncanville, Texas.					
Send comments to the Honorable Russ Kent, Mayor of the City of Duncanville, Dallas County, P.O. Box 380280, Duncanville, Texas 75138.					
Texas	Kendall County	Cibolo Creek	At downstream County boundary	None	*1,270
			Approximately 1.9 miles upstream of County boundary	None	*1,294
		Balcones Creek	At confluence with Cibolo Creek	None	*1,270
			Downstream side of Southern Pacific Railroad	None	*1,290
		Postoak Creek	At downstream County boundary	None	*1,272
			At downstream side of Silver Spur Trail	None	*1,276
			At upstream side of Rolling Acres Trail	None	*1,308
			Approximately 1,000 feet upstream of Rolling Acres Trail.	None	*1,313
Maps available for inspection at the Tax Assessor's Office, 211 East San Antonio Street, Boerne, Texas.					
Send comments to the Honorable Kenneth Muller, Kendall County Judge, 204 East San Antonio Street, Suite 1, New Braunfels, Texas 78006.					

Issued: January 16, 1987

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-2037 Filed 2-2-87; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-02; Notice 1]

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to three petitions for rulemaking and based on the agency's own compliance test experience, this notice solicits comments on a number of proposals to amend the performance requirements and test procedures of Standard No. 210, *Seat Belt Assembly Anchorages.* In response to a petition from BL Technology, the agency is soliciting comments on the possible modification of the anchorage strength test procedure to harmonize it more closely with the Economic Commission for Europe regulation on safety belt anchorages. In response to a petition from Mercedes-Benz, the notice solicits comments on the seat positioning test procedure used for conducting the anchorage strength test. Based on the agency's compliance testing, the notice also proposes several changes to the test equipment used to test the strength of the anchorage. These changes would simplify the test procedure. Harmonization of Standard No. 210 and the Economic Commission for Europe regulation would make it easier for manufacturers to use the same safety belt anchorages in vehicles to be sold in different parts of the world, thereby resulting in a cost savings. The proposed changes in the test procedure should make the tests simpler to perform for manufacturers and the agency. And in response to a petition from General Motors the agency is proposing to delete a redundant requirement for Type 2 safety belt anchorages.

DATES: Comments must be received by April 6, 1987. If adopted, the proposed amendments would become effective on September 1, 1987.

ADDRESS: Comment should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours 8 a.m.–4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Clark Harper, Office of Vehicle Safety Standards, NRM-12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202 366-4916).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 210, *Seat Belt Assembly Anchorages,* sets performance requirements for safety belt anchorages to ensure their proper location for effective occupant protection and to reduce the likelihood of the anchorage's failure in a crash. The requirements of the standard, which apply to passenger cars, trucks, buses, and multipurpose passenger vehicles, set zones within the vehicle where an anchorage must be located and specify the forces an anchorage must be capable of withstanding during a static strength test. In response to three petitions for rulemaking and based on the agency's experience in conducting compliance testing, this notice proposes a number of changes to the performance requirements and test procedures of the standard. Each of the proposed changes is discussed in detail below.

I. Anchorage Strength Test Procedure

Standard No. 210 currently uses a static pull laboratory test, rather than a dynamic pull or crash test, to measure the strength of safety belt anchorages. (In a static test, forces are slowly applied to the anchorages for a period of a few seconds. In a dynamic test, such as a 30 mph crash test, the forces are quickly applied for a few milliseconds.) The standard specifies certain minimum loads that safety belt anchorages must withstand. The standard also sets the maximum rate of onset of the test load and provides that the load must be withstood by an anchorage for at least 10 seconds.

BL Technology, Ltd., (BL) submitted a petition to amend Standard No. 210 to harmonize the anchorage strength test procedure with the Economic Commission for Europe (ECE) Regulation No. 14 on safety belt anchorages. The ECE regulation provides that the safety belt anchorage test loads must be applied as rapidly as possible and held for not less than 0.2 seconds. BL said that adopting the ECE test procedure would reduce vehicle weight and cost. In particular, BL said that additional welds and reinforcing brackets are necessary on a vehicle to withstand the 10 second load duration of Standard No. 210, but such reinforcement is not required to meet the 0.2 second load duration specified in ECE Regulation No. 14. In addition, BL argued that the static test procedure of Standard No. 210 is not representative of real world crash conditions.

The agency recognizes that the static test procedure of Standard No. 210 imposes a load for a longer period of time on a vehicle anchorage than occurs during a crash test. The agency is also aware that under dynamic loading a metal structure can withstand a larger force than under static loading. The agency is concerned that relying solely on a non-crash dynamic test procedure could result in a potential reduction in safety unless the ultimate test load the anchorage can withstand under dynamic loading is increased or the safety belt/anchorage system is required to meet other occupant crash protection requirements. The agency is soliciting comments on three possible changes to the strength requirement. The three changes are deleting strength requirements for anchorages used with dynamically-tested safety belts, harmonizing the anchorage strength test with the ECE regulation and placing limits on anchorage movement during a static test. Based on an evaluation of the comments and its continuing assessment of test data from the agency's New Car Assessment Program (NCAP) and other crash tests, NHTSA will determine whether a change in the test procedure or anchorage load requirement is necessary. (Among the information gathered in the agency's NCAP tests is data on the loads experienced by the safety belts during the test. NHTSA's most recent review of the upper torso belt performance data from 142 NCAP tests has shown that the maximium recorded upper torso belt load was 2,683 pounds for small vehicles (unloaded vehicle weight (UVW) of 2,450 pounds or less) (50 tests) 3,144 pounds for compact vehicles (UVH of 2,451 to 2,950) (44 tests), 3,608 pounds in intermediate vehicles (UVW of 2,951 to 3,450 pounds) (29 tests) and 2,833 pounds in large vehicles (UVW greater than 3,450) (19 tests). The maximum recorded safety belt loads in the compact and intermediate vehicles exceeded the 3,000 pound static test requirement currently specified in Standard No. 210. However, in each instance when the belt loads were greater than 3,000 pounds, the belts did not break, and the recorded head injury criterion and chest acceleration were less than the limits set by Standard No. 208, *Occupant Crash Protection,* even though the tests were conducted at 35 mph. The agency will continue to

review upper torso belt performance in NCAP tests and will also review lap belt performance data from those tests.)

A. Exclusion of Anchorages for Dynamically Tested Manual Belts

On April 12, 1985 (50 FR 14589), the agency proposed that manual lap/shoulder belts installed at the outboard seating positions of passenger cars, light trucks, small van-like buses and light multipurpose passenger vehicles comply with the dynamic test requirements of Standard No. 208, *Occupant Crash Protection.* On March 21, 1986 (51 FR 9800), NHTSA published a final rule requiring the dynamic testing of manual belts in passenger cars. The agency is still considering whether to require dynamic testing of manual belts in other vehicles. The dynamic test requirements provide for using test dummies in passenger car crash tests to measure the level of occupant crash protection offered by manual safety belts. The March 1986 notice also exempted dynamically tested manual safety belts from the location requirements of Standard No. 210.

A number of commenters to the April 1985 notice requested the agency to exempt dynamically tested manual belts from all of the requirements of Standard No. 210. They argued that requiring a safety belt system to meet the injury reduction requirements of Standard No. 208 is sufficient to ensure that vehicle occupants are satisfactorily protected in a crash. The agency seeks comments on whether the strength tests should be retained to assure protection for other than the 50th percentile male used in crash tests or as a surrogate for corrosion or other forms of potential anchorage weakening over the vehicle's life.

The agency believes that any exclusion from Standard No. 210 of anchorages in vehicles with dynamically tested manual belts should not apply to anchorages which are used to secure both dynamically and statically tested belts. An example of those anchorages would be the inboard anchorages for a front bench seat. It is common practice for manufacturers to use the inboard anchorages to secure both the driver's and right front outboard passenger's belts, which would be dynamically tested, and the belt for the center seating position, which would not be dynamically tested. If all three front seating positions were occupied, the inboard anchorages would be simultaneously loaded by all three safety belt systems. The agency believes that the anchorages for the front center seat should continue to meet the performance requirements of Standard No. 210.

B. Harmonization with ECE

The agency also requests comments on another approach to testing manual safety belt anchorages. This approach would be used for anchorages of safety belts that are not dynamically tested under Standard No. 208 (i.e., the front center and rear safety belt anchorages). In addition, it could be used for front outboard anchorages, if the agency does not adopt the proposed exclusion of anchorages used in those positions with dynamically tested manual safety belts.

Under this approach, the agency would revise the force application and duration requirements of Standard No. 210 to be similar to the dynamic test requirements of ECE Regulation No. 14, which requires the test load to be applied as rapidly as possible and maintained for 0.2 seconds. The agency believes the ECE requirement that the force be applied "as rapidly as possible" is too subjective and is therefore requesting comments on specifying a maximum time for application of the required test load. The agency specifically requests comments on applying the force at an onset rate of not more than 50,000 pounds per second for lap belts and 30,000 pounds per second for lap/shoulder belts with the force being attained in not more than 5 seconds and maintained for not less than 0.2 seconds.

The agency also requests comments on adopting the ECE-based strength test proposed above and harmonizing Standard No. 210 with the other performance requirements of ECE Regulation No. 14. These other changes would include harmonizing safety belt mounting angles, adopting limits on anchorage deformation, changing the minimum spacing between lap belt anchorage locations and providing a wider zone for locating upper anchorages. These possible changes are discussed in more detail below.

1. Harmonization of Lap Belt Mounting Angles

Standard No. 210 currently sets a minimum and maximum mounting angle for lap belts and for the lap portion of a lap/shoulder belt. The standard requires that the lap belt angle, measuring from the seating reference point to either the anchorage or the point where the safety belt contacts the seat frame, must be between 20 and 75 degrees from the horizontal.

The purpose of the mounting angle requirement is twofold. First, the minimum mounting angle requirement reduces the possibility of submarining (i.e., an occupant sliding forward and under the belt during a crash). The possibility of submarining increases as the belt angle approaches the horizontal (i.e., as the belt angle decreases). The potential hazard of submarining is that occupants can suffer abdominal injuries as they slide under their belts. In addition, the maximum mounting angle requirement limits forward excursion of an occupant. The possibility of forward excursion increases as the belt angle approaches the vertical (i.e., as the belt angle increases) because the belt will rotate about the anchorage before it begins to resist the crash forces.

At present, the safety belt mounting angles set in Standard No. 210 and ECE Regulation No. 14 differ. The ECE regulation requires the safety belt angle to be between 30 and 80 degrees as compared to Standard No. 210's requirement of between 20 and 75 degrees. Thus, a U.S. vehicle whose minimum mounting angle is 20 degrees cannot be sold in Europe. Likewise, a European vehicle whose maximum mounting angle is 80 degrees cannot be sold in the U.S. This could possibly result in a manufacturer having to provide two different safety belt angles in the same vehicle depending on where the vehicle is sold.

The agency is therefore proposing to change the minimum lower angle requirement from 20 degrees to 30 degrees. By requiring the minimum lap belt angle to be 30 degrees, the agency believes that the risk of occupants submarining under lap belts will be reduced. By reducing submarining, the proposed angle should reduce the possibility of abdominal injuries and of a rear seat occupant's knees striking the front seat back in a crash. The agency also is requesting accident and test data on whether increasing the maximum angle to 80 degrees will significantly increase the forward excursion of an occupant, thereby potentially increasing the possibility of injury. Finally, the agency notes that it has recently granted a petition to require rear seat lap/shoulder belts. This proposed harmonization action should not be viewed as the substitute for any action the agency may take on that issue. Rather, it is simply a response to an older petition dealing with the international harmonization of safety standards.

2. Deformation Limits

While structural deformation of the area around an anchorage can aid an occupant by absorbing part of the crash energy, excessive deformation can allow an occupant to move forward and strike

the vehicle's interior. Currently, the only limit Standard No. 210 places on structural deformation is that the anchorage must not completely separate from the structure of the vehicle. ECE Regulation No. 14, however, places limits on the movement of an anchorage during testing. It provides that during the dynamic test, the pelvic anchorage must continue to meet the minimum lateral spacing requirement of the regulation and the anchorage for an upper torso restraint must stay within the zone set out in the regulation. The agency is considering adopting the limits set in the ECE regulation (Figure 1 shows the ECE upper torso anchorage location zone).

3. Upper Anchorage Location Zone

Both Standard No. 210 and ECE Regulation No. 14 specify limits on where upper anchorages for the shoulder portion of lap/shoulder belts can be located. The ECE regulation differs from Standard No. 210 in that the ECE regulation permits an anchorage to be located farther forward than does Standard No. 210 so that an anchorage could be in front of an occupant's shoulder. The agency solicits comment on whether to adopt the upper anchorage location zone used in the ECE regulation (Figure 1 shows the ECE anchorage location zone). The agency is particularly interested in receiving additional accident and test data on the safety effects of permitting anchorages to be located in front of an occupant's shoulder.

The agency is aware of test data showing that an anchorage positioned in front of an occupant's shoulder can allow increased head movement and thus potentially increase the risk of injury. In a 1977 report prepared for the Canadian government, Calspan Corp. reported that head travel and upper torso angular motion increased as the upper anchorage point moved forward of the occupant's shoulder. (A copy of the study, Contract 16T–T8080–7–0840, has been placed in the docket for this notice.) Calspan Corp. also conducted testing for NHTSA in which the anchorage location for a passive belt equipped Volkswagen Rabbit was varied. The test data showed an increase in head movement and a trend to higher head injury criterion measurements when the anchorage was moved forward of the occupant's shoulder. (A copy of the Calspan study, "Evaluation of Passive Belts For Different Size Occupants" has been placed in the docket for this notice). In 1979, GM provided the agency with data on their investigation of upper anchorage locations. This data supports the Calspan study. (A copy of the GM data has been placed in the docket for this notice).

The agency has other test data indicating that the increases in head movement resulting from forward anchorage locations may not significantly increase the risk of injury. For example, Mercedes-Benz has submitted data in response to another rulemaking notice that indicates that having the anchorage located in front of an occupant's shoulder does not significantly increase head injury criterion and chest acceleration measurements. The testing involved 30 mph frontal/offset impacts in which 95th percentile male test dummies were placed with the seat at the seating reference point in some tests and with the seat positioned at the rearmost position in vehicles equipped with seats with extended seat track travel in other tests. With the seat in the rearmost position, the anchorage would be located in front of the occupant's shoulder. (The Mercedes data are in Docket 82–05, Notice 1, Entry 16)

4. Lateral Spacing of Lap Belt Anchorage

Standard No. 210 currently requires a minimum lateral spacing of 6.5 inches for anchorages used for a single lap belt, while the ECE regulation requires a minimum of 13.75 inches. The agency recognizes that the closer the spacing of the anchorages, the greater the possibility of increased lateral movement of an occupant during an oblique or rollover crash. In addition, the closer spacing can permit increased side loads on an occupant's pelvis. However, the agency does not have any data indicating that the possible side loads and lateral movement do, in fact, present a serious risk of injury. The agency requests comments and crash and other data on the effect of changing the anchorage spacing on occupant safety.

5. Simultaneous Testing of Anchorages

Several manufacturers have raised questions about whether anchorages on a bench seat should be tested separately or simultaneously. The agency believes that simultaneous testing of all anchorages common to one seat assembly is more representative of a real-world crash in which all seats are occupied. In addition, ECE Regulation No. 14 also uses simultaneous testing. Therefore, the agency is proposing that all seat and floor-mounted anchorages common to one seat be tested simultaneously.

C. Limitation on Anchorage Movement During Static Test

The final alternative, which the agency is considering, would be to set limits on the forward and lateral movement of anchorages during a static pull test. During the agency's compliance testing, several tests were terminated because the vehicle's floor pan and B pillar deformed to the point that the test equipment could not impose the peak anchorage load called for in the standard. The agency is also concerned that this excessive deformation may permit an occupant to move forward and contact the interior of the vehicle. ECE Regulation No. 14 requires the minimum lateral spacing for lap belt anchorages to be maintained during the dynamic test and also requires the upper anchorages to remain within the zone set out in proposed Figure 1 during the test. The agency solicits comments on whether to adopt the limits set in the ECE regulation. In addition, the agency requests comments on the possibility of adopting requirements that would limit the lateral movement of any lower anchorage to 1.0 inch and the longitudinal movement to 1.5 inches. In addition, the longitudinal movement of any upper anchorage would have to remain within the zone set forth in proposed Figure 1 with the lateral movement not exceeding two inches. These proposed values were selected as a matter of engineering judgment based on a review of the agency's compliance tests. The agency believes these limits will both substantially reduce the number of tests that will have to be terminated because of excessive deformation and will prevent excessive movement of a restrained occupant. NHTSA requests commenters to provide any data they may have on anchorage deformation during crash and compliance tests.

II. Automatic Belt Anchorage Strength

The agency is proposing to clarify the strength requirement for automatic belt anchorages. A number of manufacturers have raised questions about whether automatic belt anchorages are required to meet the strength requirements set for Type 1 lap belts or Type 2 lap-shoulder belts. In interpretation letters of July 1978 to Nissan and July 1980 to Toyo Kogyo, the agency has stated that anchorages for automatic belts are required to meet the strength requirements set for Type 2 lap/shoulder safety belt anchorages. This notice would explicitly incorporate that interpretation in the standard.

III. Deletion of Manual Belt Anchorages for Automatic Belt Vehicles

S4.1.1 of Standard No. 210 currently requires anchorages for Type 2 lap/shoulder belts at the front outboard seating positions in all passenger cars. S4.3 of the standard requires those anchorages to be located in specific zones within the vehicles. The purpose of the location specification is to ensure that an anchorage will be located so that the safety belt attached to it will provide sufficient protection to a vehicle occupant. In the case of automatic belts and dynamically tested manual belts, the standard provides that the anchorages for those belts are exempt from the requirement in the standard that anchorages must be located in certain specified zones within the vehicle.

The agency exempted automatic and dynamically tested manual belt anchorages to give manufacturers flexibility in designing those safety belts, which must meet the occupant protection criteria of Standard No. 208. However, the agency has said that anchorages for a Type 2 (manual lap and shoulder) safety belt are still required for the front outboard seats in a vehicle equipped with automatic belts, if the automatic belt anchorages are outside the required locations for Type 2 safety belt anchorages. The agency has previously said that requiring Type 2 safety belt anchorages for vehicles equipped with automatic belts would allow owners to replace damaged automatic belts with a Type 2 belt if they desired.

NHTSA has recently granted a petition for rulemaking from General Motors requesting the agency to provide that the safety belt anchorage installation requirement of S4.1.1 of the standard is satisfied by the installation of safety belt anchorages for a safety belt that meets the occupant crash protection requirements of Standard No. 208, *Occupant Crash Protection*. The agency has tentatively decided to adopt GM's proposal, primarily because the July 1984 decision on Standard No. 208 concluded that automatic restraints, such as automatic belts, that meet the occupant crash protection requirements of the standard meet the need for motor vehicle safety. Thus, manual belt anchorages for automatic belt equipped seating positions are redundant for persons protected by the automatic restraint. Therefore, the agency is proposing to delete the requirement for providing separate Type 2 safety belt anchorages at designated seating positions equipped with automatic and dynamically tested manual belts which meet the occupant crash protection requirements of Standard No. 208. (Anchorages for a manual lap belt would still be required for the front right seating position if the automatic restraint cannot be used to secure a child safety seat. See 50 FR 41356; October 10, 1985.)

IV. Test Anchorage With Seat in its Rearmost Position

Mercedes-Benz has petitioned the agency to revise the seat location requirement currently used in upper torso belt anchorage testing. The standard currently provides that a seat is to be placed in its full rearward and downward position and the "H" point of a two dimensional manikin is to be located at the seating reference point. (The "H" point simulates the location of the hip joint; the seating reference point is the manufacturer's design reference point that determines the rearmost normal driving position of the seat. Standard No. 210 uses the seating reference point in determining the zone for the location of the upper anchorages for lap/shoulder belts.) Mercedes said that in some vehicles with long seat track travel, it is possible that the seating reference point will be several inches in front of the seat back of an adjustable seat placed in its rearmost position. Because of this, Mercedes requested the agency to delete the requirement for a vehicle seat to be in its full rearward position.

In 1985, during the agency's compliance testing on Standard No. 210, NHTSA gathered data on the relationship of the seating reference point to the rearmost position of the seat on the seat track. NHTSA found that the seating reference point coincided with the rearmost position of the seat in all of the cars tested. Recently, manufacturers have provided additional information on this issue to the agency. In responding to the agency's June 1986 (51 FR 20536) notice of proposed rulemaking on redefining the term "seating reference point," several manufacturers indicated that they now provide extended seat track travel in some of their vehicles. For example, Ford said that most of its passenger vehicles and some of its light trucks have extended seat track travel and American Motors said that about 50 percent of its current and planned vehicles have extended seat track travel. Thus, in those vehicles the seating reference point would not coincide with the rearmost position of the seat on its track.

As explained in the June 1986 notice on seating reference point, the agency believes that positioning of the seat for the purposes of determining a vehicle's compliance with the anchorage location requirements of Standard No. 210 should be treated differently than the positioning of the seat for other standards. The agency believes that the upper anchorages should be tested with the seat in its rearmost position, since that position will be used by some vehicle occupants. The agency is concerned that if it did not test the vehicle with the seat in its rearmost position then an anchorage for an upper torso belt, correctly positioned with respect to the seating reference point located ahead of the rearmost position, could lie forward of the occupant's shoulder when the seat is in its most rearward position. As discussed earlier in this notice, the agency is concerned that an anchorage positioned in front of an occupant's shoulder can allow increased head movement and thus may increase the risk of injury. Thus, the agency is proposing to continue to determine a vehicle's compliance with the anchorage location requirements of the standard with the seats in the full rearward position.

However, the agency plans to use the existing seating reference point, which may not be the rearmost position, for testing to determine whether the lap portion of a lap belt or a lap/shoulder belt meet the minimum and maximum mounting angle requirements. The agency is concerned that the minimum lap belt angle for 5th percentile adult females would, in all liklihood, be marginal if the rearmost seating position is used, rather than the seating reference point.

V. Compliance Test Equipment

During the past several years, NHTSA's Office of Vehicle Safety Compliance has encountered several problems while conducting Standard No. 210 compliance testing. Approximately 30 percent of the agency's recent compliance tests could not be completed because of problems associated with interaction between the test equipment and the belt assembly. The problems result mainly from excessive side loads induced by the body block, designed to simulate the human torso, used in the test procedure. Other tests have been stopped prior to attaining the prescribed test loads because of belt webbing elongation, deformation of the vehicle structure, or lack of adequate pull distance for the body block in smaller vehicles. Most of those tests are not repeated because the vehicle has been damaged and another vehicle is not available. Based on this compliance test experience, the agency is proposing a

number of changes in the test procedures and equipment.

A. Use of Cables

At present, the standard uses the safety belt assemblies installed in the vehicle to transfer the test load from the body block to the anchorage. This notice proposes to adopt the use of cables instead of safety belts with the cable routed through the "D" ring and attached to the existing retractor. This will reduce the number of tests that cannot be completed because of problems associated with interaction between the test equipment and the safety belts. The agency has conducted a test program using cables and found that it produces results comparable to those produced by the current Standard No. 210 test procedure. (The report, Contract No. DTHN22–83–P–020378, for that testing has been placed in the docket for this notice.)

B. Test Block Width

The 14 inch width of the current body block can preclude the simultaneous testing of safety belt anchorages for all three seating positions in the rear seat of smaller cars. This notice proposes to reduce the width of the body block from 14 inches to 10 inches and to reduce the length from 20 inches to 13 inches. The width reduction should make it easier to simultaneously test all of the anchorages in a rear seat. In addition, the length reduction should provide more pull distance in both front and rear seats, thus making it easier to perform the anchorage strength test. The agency recognizes that this will result in a very small reduction in the longitudinal load applied to the anchorage; however the overall load input will be the same.

VI. Clarification of Compliance Failure

Standard No. 210 currently provides that the safety belt anchorage must meet certain performance requirements. In compliance testing, there have been instances in which the safety belt attachment hardware or attachment bolts have broken before the maximum test load has been applied to the anchorage. It is important that the attachment hardware and bolts have the same strength as the anchorage. The agency is proposing to amend the standard to make clear that a failure of the attachment hardware, the attachment bolt, or the anchorage to meet the strength performance requirement constitutes a compliance failure.

Cost and Benefits

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of E.O. 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other impacts of this rulemaking action are so minimal that a full regulatory evaluation is not required. The amendments proposed by this notice are intended to simplify the compliance test procedure and to promote the international harmonization of vehicle safety requirements.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

Few, if any, passenger car manufacturers would qualify as small entities. Small organizations and governmental units should not be significantly affected since the potential decreases associated with this proposed action should only slightly affect the purchase price of new motor vehicles.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR 571.210 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.210 [Amended]

2. S4.2.1 would be revised to read as follows:

S4.2.1 Except for side-facing seats, the anchorages for a Type 1 seat belt assembly or for the pelvic portion of a Type 2 or automatic seat belt assembly and the seat belt attachment hardware and attaching bolts for those anchorages shall withstand a 5,000 pound force when tested in accordance with S5.1.

3. S4.2.2 would be revised to read as follows:

S4.2.2. The anchorages for a Type 2 seat belt assembly or for an automatic seat belt assembly and the seat belt attachment hardware and attaching bolts for those belt anchorages shall withstand a 3,000-pound force when tested in accordance with S5.2.

4. S4.2.3 would be revised to adopt one of the following two alternatives:

Alternative One

During the test, an upper torso restraint anchorage and its attachment hardware and bolt shall remain in the zone specified in S4.3.2 and the anchorages for a Type 1 lap belt or the pelvic portion of a Type 2 or automatic

belt shall continue to meet the lateral spacing requirement of S4.3.1.4.

Alternative Two

During the test, no portion of each lower anchorage and its attachment hardware and bolt shall move laterally more than one inch or move longitudinally more than 1.5 inches. No portion of each upper anchorage and its attachment hardware and bolt shall move outside the zone described in Figure 1 or move laterally more than two inches.

5. S4.2.4 would be revised as follows:

S4.2.4 Except for seat belt anchorages common to forward-facing and rearward-facing seats, all floor-mounted and seat-mounted seat belt anchorages for a set of laterally adjacent designated seating positions shall be tested by simultaneously loading cables, duplicating the geometry of the seat belt assemblies, secured to retractors or other attachment hardware at those anchorages.

6. The second sentence in S4.3 would be revised by replacing the word "passive" by the phase "automatic or dynamically tested manual."

7. S4.3.1.1 would be revised to read as follows:

S4.3.1.1 In an installation in which the seat belt does not bear upon the seat frame:

(a) If the seat is a nonadjustable seat, then a line from the seating reference point to the nearest contact point of the belt with the hardware attaching it to the anchorage shall extend forward from the anchorage at an angle with the horizontal of not less than 30 degrees and not more than 75 degrees.

(b) If the seat is an adjustable seat, then a line from a point 2.50 inches forward of and 0.375 inches above the seating reference point to the nearest contact point of the belt with the hardware attaching it to the anchorage shall extend forward from the anchorage at an angle with the horizontal of not less than 30 degrees and not more than 75 degrees.

8. The second sentence of S4.3.1.2 would be revised to read as follows:

* * * The line from the seating reference point to the nearest belt contact point on the seat frame, with the seat positioned at the seating reference point, shall extend forward from that contact point at an angle with the horizontal of not less than 30 degrees and not more than 75 degrees.

9. S4.3.1.3 would be revised to read as follows:

S4.3.1.3 In an installation in which the seat belt anchorage is on the seat structure, the line from the seating reference point to the nearest contact point of the belt with the hardware attaching it to the anchorage shall extend forward from that contact point at an angle with the horizontal of not less than 30 degrees and not more than 75 degrees.

10. S4.3.2 would be revised to read as follows:

S4.3.2 Place the seat in its full rearward and downward position and place the seat back in its most upright position. With the seat and seat back so positioned, the seat belt anchorage for the upper end of the upper torso restraint shall be located within the acceptable range shown in Figure 1, with reference to a two-dimensional manikin described in SAE Recommended Practice J826 April 1980. The manikin's "H" point shall be at the design "H" point of the seat for its full rearward and full downward position, as defined in SAE Recommended Practice J1100 July 1979, and the manikin's torso line shall be at the same angle from the vertical as the seat back.

11. A new third sentence would be added to S5 to read as follows:

* * * Use the attachment hardware (including retractors and "D" rings) and bolts from the existing seat belt assembly to secure the cables to the vehicle structure.

12. S5.1 would be revised to read as follows:

S5.1 With the seat in its full rearward and full downward position, apply a force of 5,000 pounds, in the direction in which the seat faces, to a pelvic body block (described in Figure 2) restrained by a cable representing the geometry of a Type 1 seat belt assembly or the pelvic portion of a Type 2 or automatic seat belt assembly, as applicable, in a plane parallel to the longitudinal centerline of the vehicle, with an initial force application angle of not less than 30 degrees and not more than 15 degrees above the horizontal. Apply the force at an onset rate of not more than 50,000 pounds per second. Attain the 5,000 pound force in not more than 30 seconds and maintain it for 10 seconds.

13. S5.2 would be revised to read as follows:

S5.2 With the seat in its full rearward and full downward position, apply a force of 3,000 pounds, in the direction in which the seat faces, simultaneously to the pelvic and upper torso body blocks (described in Figures 2 and 3), as applicable, restrained by a cable representing the geometry of a Type 2 or automatic seat belt assembly, as applicable, in a plane parallel to the longitudinal centerline of the vehicle, with an initial force application angle of not less than 5 degrees and not more than 15 degrees above the horizontal. Apply the force at an onset rate of not more than 30,000 pounds per second. Attain the 3,000 pound force in not more than 30 seconds and maintain it for 10 seconds.

16. Figures 1 and 2 would be revised as follows:

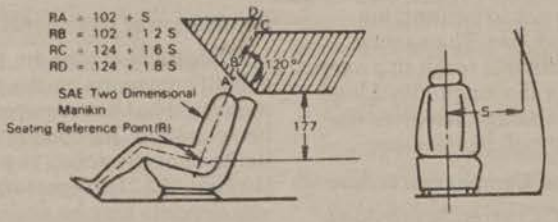

Figure 1 Location of Anchorage for Upper Torso Restraint

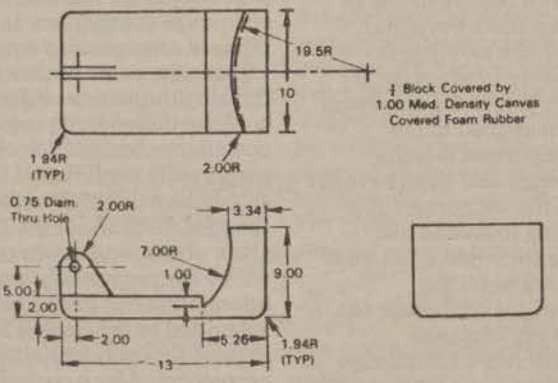

Figure 2. Body Block for Lap Belt Anchorage

Issued on January 28, 1987.

Ralph Hitchcock,

Acting Associate Administrator for Rulemaking.

[FR Doc. 87-2063 Filed 1-29-87; 4:03 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 52, No. 22
Tuesday, February 3, 1987

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

Federal Grain Inspection Service

Designation Renewal of the Columbus, OH, Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Columbus Grain Inspection, Inc. (Columbus) as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: March 1, 1987.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Columbus' designation terminates on February 28, 1987, and requested applications for official agency designation to provide official services within a specified geographic area in the September 2, 1986, **Federal Register** (51 FR 31153). Applications were to be postmarked by October 2, 1986. Columbus was the only applicant for designation in its geographic area and applied for designation renewal in the area currently assigned to that agency.

The Service announced the applicant name and requested comments on the same in the November 3, 1986, **Federal Register** (51 FR 39881). Comments were to be postmarked by December 18, 1986. Five favorable comments were received regarding Columbus' designation renewal.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Columbus is able to provide official services in the geographic area for which the Service is renewing its designation. Effective March 1, 1987, and terminating February 28, 1990, Columbus will provide official inspection services in its entire specified geographic areas, previously described in the September 2 **Federal Register**.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Divsion, at the address listed above or the agency at the following address: Columbus Grain Inspection, Inc., 348 ½ E. Franklin, P.O. Box 167, Circleville , OH 43113.

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

Dated: January 28, 1987.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 87–2136 Filed 2–2–87; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Bloomington, IL, and Plainview, TX, Agencies.

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to Bloomington Grain Inspection Department (Bloomington) and Plainview Grain Inspection and Weighing Service, Inc. (Plainview).

DATE: Comments to be postmarked on or before March 20, 1987.

ADDRESS: Comments must be submitted, in writting, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the December 1, 1986, **Federal Register** (51 FR 43224). Applications were to be postmarked by December 30, 1986. Bloomington and Plainview were the only applicants for designation in their geographic area and each applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the address listed above.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

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

Dated: January 28, 1987.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 87-2134 Filed 2-2-87; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the State of Georgia and Schneider, IN, Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are Georgia Department of Agriculture and Schneider Inspection Service, Inc.

DATE: Applications to be postmarked on or before March 5, 1987.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Georgia Department of Agriculture (Georgia), Capitol Square, Room 604, Atlanta, GA 30334, was designated under the Act as an official agency to provide inspection and weighing functions on August 1, 1984; Schneider Inspection Service, Inc. (Schneider), 15406 White Oak, Lowell, IN 46356, was designated on that date to provide inspection functions.

Each official agency's designation terminates on July 31, 1987. Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Georgia, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows: The entire State of Georgia, excluding those export port locations within the State.

The geographic area presently assigned to Schneider in the States of Illinois, Indiana, and Michigan, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

In Illinois and Indiana: Bounded of the North by the northern Will County line from Interstate 57 east to the Illinois-Indiana State line; the Illinois-Indiana State line north to Interstate 94; Interstate 94 east-northeast to the northern Laporte County line; the northern St. Joseph and Elkhart County lines;

Bounded on the East by the eastern and southern Elkhart County lines; the eastern Marshall County lines;

Bounded on the South by the southern Marshall and Starke County lines; the eastern Jasper County line south-southwest to U.S. Route 24; U.S. Route 24 west to Indiana State Route 55; Indiana State Route 55 south to the Newton County line; the southern Newton County line west to U.S. Route 41; U.S. Route 41 north to U.S. Route 24; U.S. Route 24 west to the Indiana-Illinois State line; and

Bounded on the West by Indiana-Illinois State line north to Kankakee County; the southern Kankakee County line west to U.S. Route 52; U.S. Route 52 north to Interstate 57; Interstate 57 north to the northern Will County line.

In Michigan: Berrien, Case, St. Joseph, Branch, and Hillsdale Counties.

The following locations, outside of the foregoing contiguous geographic area, are presently assigned to Schneider and are part of this geographic area assignment: Central Soya and Farmers Grain, Winamac, Pulaski County, Indiana.

Interested parties, including Georgia and Schneider, are hereby given opportunity to apply for official agency designation to provde the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning August 1, 1987, and ending July 31, 1990. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above, for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

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

Dated: January 28, 1987.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 87-2135 Filed 2-2-87; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

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

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

Agency: National Oceanic and Atmospheric Administration

Title: Application for Fishing Vessel Guarantee

Form Number: Agency-NOAA-88-1; OMB- 0648-0012

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 1,510 respondents; 12,080 reporting hours

Needs and uses: Title XI of the Merchant Marine Act authorizes the Fisheries Obligation Guarantee (FOG) program to assist small businessmen in financing commercial fishing vessels and shoreside facilities. The information provided is used to determine the risk to the Federal government of guaranteering the loan

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion; annually

Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Donald Arbuckle, 395–7340

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

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: January 27, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–2121 Filed 2–2–87; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[C–421–601]

Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers From the Netherlands

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in the Netherlands of certain fresh cut flowers (cut flowers) as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 3.48 percent *ad valorem.*

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of cut flowers from the Netherlands 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 the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Lori Cooper, Eleanor Shea, 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) 377–8320, 377–0184, or 377–2438.

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 producers or exporters in the Netherlands of cut flowers. For purposes of this investigation, the following programs are found to confer subsidies:

- Natural Gas Provided at Preferential Rates.
- Aids for the Creation of Cooperative Organizations.
- Glasshouse Enterprises Program.
- Aids for the Reduction of Glass Surface.
- Steam Drainage Systems.
- Guarantee Fund for Agriculture.

We determine the estimated net subsidy to be 3.48 percent *ad valorem.*

Case History

On May 21, 1986, we received a petition in proper form from the Floral Trade Council filed on behalf of the U.S. industry producing cut flowers. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that producers or exporters in the Netherlands of cut flowers receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on June 10, 1986, we initiated an investigation (51 FR 21958, June 17, 1986). We stated that we expected to issue a preliminary determination on or before August 14, 1986.

On June 25, 1986, the petitioner requested a full extension of the period within which a preliminary countervailing duty determination must be made pursuant to section 703(c)(1)(A) of the Act. On July 3, 1986, we issued a notice of postponement stating that the preliminary determination would be made on or before October 20, 1986 (51 FR 25084, July 10, 1986).

Since the Netherlands is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from the Netherlands materially injure, or threaten material injury to, a U.S. industry. On July 7, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the Netherlands of the subject merchandise (51 FR 25751, July 16, 1986).

On June 20, 1986, we presented a questionnaire concerning petitioner's allegations to the Government of the Netherlands and to the Delegation of the Commission of the European Communities (EC), in Washington, DC. According to the Government of the Netherlands, there are over 8,000 flower growers in the Netherlands. Therefore, we requested that the government provide aggregate information in the questionnaire responses. We received the government response on August 8, 1986, and the EC response on August 11, 1986. We sent a supplemental questionnaire to the Government of the Netherlands on September 5, 1986. We received the government's supplemental response on September 26, 1986, and received an additional submission, containing several amendments to the supplemental response, on October 2, 1986.

On August 11 and December 24, 1986, we received letters on behalf of the EC and the Government of the Netherlands, respectively, challenging the standing of the Floral Trade Council and requesting dismissal of the petition. As we have previously stated, see, *e.g., Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada* (51 FR 10041, March 24, 1986), neither the Act nor the Commerce Regulations requires a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case. Where domestic industry members opposing an investigation provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will review whether the opposing parties do, in fact, represent a major proportion of the domestic industry. In this case, we have not received any opposition from the domestic industry.

On the basis of the information contained in the responses to our questionnaires, we made a preliminary affirmative countervailing duty determination on October 20, 1986 (51 FR 37944, October 27, 1986).

Based upon the request of petitioner, on November 26, 1986, we extended the deadline dates for the final determinations in the countervailing duty investigations of certain fresh cut

flowers from Canada, Israel, Kenya, the Netherlands, and Peru, and standard carnations from Chile to correspond to the date of the final determinations in the antidumping duty investigations of the same merchandise, pursuant to section 705(a)(1) of the Act, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98–573) (51 FR 43649, December 3, 1986). On January 9, 1987, we extended the deadline date for the countervailing duty determinations on standard carnations from Chile and certain fresh cut flowers from Israel and the Netherlands to coincide with the postponement of the final antidumping duty determination on standard carnations from Chile, in accordance with section 705(a)(1) as amended, 19 U.S.C. 1671d(a)(1) (52 FR 1515, January 14, 1987).

On November 20 and 21, 1986, we verified the response of the EC in Brussels, Belgium. From November 24 through December 5, 1986, we verified the responses of the Government of the Netherlands in The Hague. We received amended responses from respondents on December 31, 1986, January 2, 13, 14, and 16, 1987.

At the request of petitioner and respondents, a public hearing was held on December 17, 1986, to afford interested parties an opportunity to present views orally in accordance with our regulations (19 CFR 355.35). Petitioner and respondents filed case briefs on December 10, 1986, post-hearing briefs on December 24, 1986, and comments on the verification reports on January 21, 1987. We received additional comments from the Government of the Netherlands on December 24, 1986 and January 20 and 23, 1987.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS) and standard chrysanthemums, alstroemeria, and gerbera, currently provided for in item 192.21 of the TSUS.

Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general 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* (49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring subsidies (the review period) is calendar year 1985. Based upon our analysis of the petition and the responses to our questionnaires, verification, and comments filed by petitioner and respondents, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to producers or exporters in the Netherlands of cut flowers under the following programs:

A. Natural Gas Provided at Preferential Rates

Petitioner alleges that the Dutch gas company, partly owned by the Government of the Netherlands, supplies natural gas at preferential rates to the greenhouse industry which includes the producers of cut flowers.

Natural gas in the Netherlands is sold directly to major customers by the N.V. Nederlandse Gasunie (Gasunie). The Agricultural Industrial Board, or "Landbouwschap", a quasi-governmental body, acts as a negotiating body with Gasunie to determine the prices and general terms of gas delivery for Dutch horticulturalists (*i.e.*, greenhouse growers).

Gasunie is 40 percent owned by DSM Aardgas (a company wholly-owned by the Government of the Netherlands), 10 percent by the Government of the Netherlands, 25 percent by Shell Nederland, and 25 percent by Esso Nederland N.V. While the Government of the Netherlands does not own a controlling interest in Gasunie, it plays a significant role in the setting of natural gas prices. The Minister of Economic Affairs reserves the right to approve selling prices and terms of delivery for supplies to public distributors in the Netherlands, large export contracts, and contracts between Gasunie and the Landbouwschap. In this respect, the Minister's right forms part of the system of controls normally applied to prices.

The Landbouwschap is a statutory trade organization created under the Industrial Organizations Act. Its chairman is approved by the Government of the Netherlands and its purpose is to represent the economic and political interests of the agricultural sector in the Netherlands.

At verification, we found that natural gas prices are based on consumption levels which are broken down into five categories or "zones"—zones "a" through "e". Zone "a" users are small gas consumers, such as homeowners or small businesses which use less than 170,000 cubic meters of gas per year; zone "e" users are the largest consumers, such as industries which use more than 50 million cubic meters of gas per year. Zone "a" users pay the highest price per cubic meter; zone "e" the lowest.

One of Gasunie's primary concerns is not to lose customers to energy substitutes, primarily heavy or light fuel oil. Therefore, the rate for each zone is based on the world market price of heavy or light fuel oil. The price of gas to all users is less than, equal to, or greater than the calorifically equivalent fuel oil (light or heavy) price, depending on the readiness of various buyers to switch to, and maintain their usage of, the substitute fuel. For example, the zone "a" rate is tied to the world market price of light fuel oil, while the zone "b" through "e" rates are tied to the world market price of heavy fuel oil. Zone "d" is the point of parity between heavy fuel oil and natural gas.-. The zone "b", "c", and "e" rates are tied to the world market price of heavy fuel oil, adjusted to account for the cost of converting to and using the substitute fuel.

The rate for each zone is set on a quarterly basis and is based on the world market prices of light and heavy fuel oil during the previous quarter. Gas prices are determined by this schedule for all users with the following exceptions which are determined by separate contracts: prices for exports, prices paid by local gas distribution companies, and prices paid by greenhouse growers.

The Board of Directors of Gasunie has twelve seats, six of which are held by private stockholders (Shell Nederlandse and Exxon Nederlandse N.V.), and six of which are held by officials appointed by the government. Gas prices, and the above-mentioned contracts, require a 75 percent majority approval of the Board and are subject to the final approval of the Minister of Economic Affairs.

As noted above, the greenhouse growers, through the Landbouwschap, negotiated a contract with Gasunie for their natural gas. Under the contract, greenhouse growers pay the zone "d" rate plus 0.5 guilder cents per cubic meter of gas. Absent the contract, most greenhouse growers, given their individual consumption levels, would fall in zone "a" or zone "b", with a few falling in zone "c".

In the 1984 contract negotiated with Gasunie by the Landbouwschap on behalf of greenhouse growers, a maximum ceiling price was established. At verification, we found that, during the first three quarters of 1985, the ceiling price was lower than the zone "d" plus 0.5 guilder cents rate. In the fourth quarter of 1985, the ceiling price

was higher than the zone "d" plus 0.5 guilder cents rate. No other group in the Netherlands has ever benefitted from such a ceiling price. At verification, we were informed for the first time that, in September 1985, Gasunie sent a letter to the Landbouwschap withdrawing the maximum ceiling price from the contract, effective at the start of the fourth quarter. The Landbouwschap objected to this unilateral withdrawal.

Because greenhouse growers are the only group in the Dutch economy that has such a contract, we determine that the Government of the Netherlands, through Gasunie and the Landbouwschap, provides natural gas under this contract to "a specific enterprise or industry, or group of enterprises or industries" within the meaning of section 771(5)(B) of the Act. The contract constitutes governmental provision of natural gas because the Government of the Netherlands owns 50 percent of Gasunie, the Minister of Economic Affairs must approve the contract between Gasunie and the Landbouwschap, and the Landbouwschap itself is a quasi-governmental organization. Furthermore, the contract involves the provision of natural gas to a specific industry because, while the Landbouwschap represents the interests of the entire agricultural sector, this contract was negotiated on behalf of a specific group within agriculture, that is, greenhouse growers.

In order to determine whether the prices paid for natural gas under this contract are preferential within the meaning of section 771(5)(B)(ii) of the Act, we examined both prices established in the contract; that is, the zone "d" rate plus 0.5 guilder cents, and the ceiling price. With respect to the zone "d" rate plus 0.5 guilder cents, we determine that this price is not preferential for the following reasons.

We recognize that a contract providing gas to greenhouse growers as a group, at a lower rate than they would pay individually based on consumption, does not necessarily, in and of itself, constitute preference. The contract specifies that greenhouse growers pay the zone "d" rate plus 0.5 cents per cubic meter of gas. Yet, based on total collective consumption, greenhouse growers would be eligible for the zone "e" rate, which is lower than the zone "d" plus 0.5 guilder cents rate. Given this high level of collective consumption, it is in the interest of greenhouse growers to band together to negotiate a contract with the Landbouwschap to obtain the lowest possible gas rate. Gas constitutes a significant portion of the greenhouse growers' cost of production. Additionally, greenhouse growers have, over the years, developed and retained the ability to convert relatively easily from gas to oil heating systems if the economics of fuel usage justify the change. Furthermore, greenhouse growers constitute a well-organized group of consumers with considerable bargaining power. Greenhouse growers in the Netherlands traditionally have banded together for purposes of marketing and distributing their products through the auction system. From the standpoint of Gasunie, it is in the commercial interest of its owners to provide greenhouse growers with gas at the zone "d" plus 0.5 guilder cents rate because this reflects the highest price Gasunie can charge without losing greenhouse customers to alternative fuel sources. Therefore, the provision in the contract which stipulates the zone "d" rate plus 0.5 guilder cents per cubic meter for greenhouse growers can be justified by economic considerations and we do not consider this a preferential price.

However, with respect to the ceiling price in the contract, we determine that this price is preferential within the meaning of section 771(5)(B)(ii) of the Act. First, greenhouse growers are the only group of gas consumers within zone "d" that benefits from a price ceiling. Indeed, they are the only group throughout the Dutch economy that benefits from a ceiling price. The existence of the price ceiling constitutes preferential treatment because comparable users are denied such a provision. Although respondents argue that the ceiling price is a negotiated contract price, no ceiling price is in effect for other zone "d" users that consume a comparable amount of natural gas and that, presumably, have comparable bargaining power to negotiate a ceiling price. Therefore, the inclusion of the ceiling price in the contract cannot be considered non-preferential when no other gas users are enjoying the same price ceiling.

When zone "d" rates increase above the ceiling price, the price ceiling constitutes the provision of a good by the Government of the Netherlands through Gasunie to greenhouse growers at a price that is lower than the price charged by the government to other users of gas within the Netherlands. Thus, the ceiling price constitutes price discrimination by the government. Accordingly, we determine that the ceiling price constitutes the provision of a good at a preferential rate.

To calculate the benefit to greenhouse growers under this program, we took the difference between the price of gas actually paid by greenhouse growers during 1985 and the zone "d" plus 0.5 guilder cents price they would have had to pay under the contract absent the ceiling price. We allocated this amount over total sales of greenhouse growers during the review period. This resulted in an estimated net subsidy of 2.45 percent *ad valorem*.

Respondents have requested that we establish a separate deposit rate reflecting the withdrawal of the maximum ceiling price by Gasunie. It is our policy to take into account verified program-wide changes that occur prior to our preliminary determination.

Although we found at verification that Gasunie sent a letter to the Landbouwschap in September 1985 withdrawing the ceiling price, it was a unilateral withdrawal contested by the Landbouwschap. No new contract has been signed between the parties agreeing to the withdrawal and, therefore, the current contract technically still includes the maximum ceiling price for greenhouse growers. Accordingly, we cannot consider the unilateral withdrawal of the ceiling price from the contract to be a program-wide change. Thus, the fact that greenhouse growers may not currently be enjoying benefits under this program because the zone "d" rate plus 0.5 guilder cents is currently lower than the ceiling price is irrelevant to our determination.

B. Aids for the Creation of Cooperative Organizations

Petitioner alleges that Dutch auction houses receive funds from both the European Community (EC) and the Government of the Netherlands for the creation of cooperative organizations. Petitioner states that a major proportion of EC flowers passes through Dutch auction houses, which are flower grower cooperatives. Petitioner further contends that these auction houses are the exclusive selling agents for the member growers and form cartels to regulate the industry.

Under EC Regulation 355/77, grants have been provided since 1978 by the EC through the Agricultural Guidance and Guarantee Fund with matching grant contributions from EC member states. The purpose of the program is to improve the processing, marketing, and distribution of agricultural products in member states.

This grant program has two levels. First, there is a "program" level whereby member states submit sectoral program proposals to the EC for approval. Programs are generally approved for a

three- to five-year period. While funding is guaranteed for investment projects under approved programs for the life of the program, the level of funding provided each year is determined annually by the EC.

The second level is the "project" level whereby companies or organizations submit specific investment project proposals to their member state governments, which, in turn, pass the proposals on to the Fund for consideration. Only when there is an approved program will the EC accept and consider specific investment project applications.

Project grants are paid in two installments. Fifty percent of the grant is paid upon certification that half of the investment project has been completed, and the remainder of the grant is paid upon certification that the entire project has been completed. Grant recipients must complete projects within four years of the date of approval of the grant. Before this two-level funding system became fully operational in 1980, member state governments could also submit specific investment project proposals for funding.

During verification, we found that the Government of the Netherlands submitted a program proposal to the EC in 1979 for flower auctions. In 1980, the EC approved the program for a four-year duration. This program terminated at year-end 1984; however, project applications submitted to the EC by December 1984 were eligible for, and received, grant approval in June 1985. At verification, we found that grants are still being disbursed under the flower auction program for investment projects approved in June 1985 or previously. In February 1985, the Government of the Netherlands requested an extension of the flower auction program, but withdrew this request in March 1986. In addition, flower auctions also had projects approved in 1978 and 1979 during the transition period before the two-level funding system became operational in 1980.

Since 1978, several program proposals have been submitted by the Government of the Netherlands and have been approved for products including fruits, vegetables, flowers, nursery products, crop seeds, grass seeds, potatoes, cheese, milk, beef, pork, poultry, veal, and fish. However, only a few programs are submitted and approved each year and a limited number are in effect at the same time. For example, in 1980, the year in which the program for flower auctions was approved, only three other programs were approved, two of which pertained to fruit and vegetables and one which pertained to beef slaughterhouses. Even if we look at a three-year time span (*e.g.*, 1979–1981), we find that not all agricultural activities, or even a wide range of agricultural activities, received approval under this program. For 1978 and 1979, the two years prior to the approved flower auction program, our analysis of the EC's statistical reports also shows that the Dutch projects funded did not encompass all agricultural activities, or even a wide range of agricultural activities. Moreover, there are no standard criteria established by the Government of the Netherlands or the EC for selection of either sectoral programs or projects under the Aids for the Creation of Cooperative Organizations program.

Because the Government of the Netherlands selects only certain activities and/or products within the agricultural sector for which it proposes a program to the EC for funding, we determine that this grant program is administered in such a way as to be limited to a specific enterprise or industry, or group of enterprises or industries in the Netherlands and, therefore, is countervailable. Furthermore, because the Government of the Netherlands limits its selection of programs to be submitted to the EC for consideration, and because we saw no evidence of standard criteria applied in the approval of programs by the EC, it follows that the grants approved and disbursed by the EC are also limited to a specific group of enterprises or industries within the agricultural sector of the Netherlands and are, therefore, countervailable.

To calculate the benefit from this program, we followed the grant methodology outlined in the Subsidies Appendix. We took the total value, in guilders, of grants given in each year to flower auction houses under this program and allocated these amounts over ten years, which is the average useful life of renewable physical assets in the agricultural sector as determined under the U.S. Internal Revenue Service's Asset Depreciation Range System. Although the flower auction program terminated in 1984 and no grants were approved after June 1985, benefits are still accruing from these grants under our methodology. For the years prior to 1982, we used as the discount rate, the average commercial bond rate in the Netherlands, as reported in the *OECD Financial Statistics, 1985*. For the years 1982 through 1985, we used as the discount rate, commercial loan rates published by the Netherlands Bank (the Central Bank). We then took the total of the 1985 benefits from all of these grants and divided it by total flower auction sales during the review period. This resulted in an estimated net subsidy of 0.17 percent *ad valorem*.

C. Glasshouse Enterprises Program

Petitioner alleges that producers of cut flowers in the Netherlands are benefitting from a grant provided by the Minister for Agriculture and Fisheries to the "gardening sector." This grant was provided for research and investment in energy conservation in glasshouse enterprises.

At verification, government officials stated that the Glasshouse Enterprises Program was part of a national energy conservation policy developed by the Ministry of Economic Affairs, and that other government ministries develop and implement specific objectives and programs for the particular sectors or groups falling under their jurisdiction. While there may be a general national energy conservation policy, we saw no evidence of a coordinated national program under which the Glasshouse Enterprises Program was funded or administered, nor could we tie the funds authorized under this program to ministerial budget allocations for energy activities.

Under the Glasshouse Enterprises Program, the Minister of Agriculture and Fisheries appropriated 300 million guilders (f300 million), of which f270 million was to be spent to stimulate private investment in energy-saving methods in the horticultural industry and f30 million was to be spent on research. (See Section II.A. of the notice for a complete discussion of the Glasshouse Enterprises Research Grants.) The program was scheduled to terminate in 1984; however, the fund was not fully used, and was extended for one year to June 1985. During verification, we found that grants under this program were still being provided during 1986. Officials from the Ministry of Agriculture and Fisheries explained that these grants were given on energy saving investment plans approved prior to the termination of the program and that funds under these plans could be disbursed in 1987 or later.

In order to receive grants for investments, applicants were required: (1) To have been professionally involved in agriculture, with at least one-half of their agricultural activities in the horticultural sector; (2) to have used at least 30,000 cubic meters of natural gas in 1980; and (3) to have realized at least a 20 percent energy savings by program's end.

Because this program was available only to greenhouses, we determine that

it was limited to a specific enterprise or industry or group of enterprises or industries and, as such, is countervailable.

We calculated the benefit under this program according to the grant methodology outlined in the Subsidies Appendix. For each of the years 1982 to 1985, we took the total amount of grants provided to all Dutch greenhouse growers under this program. We allocated these amounts over ten years, which is the average useful life of renewable physical assets in the agricultural sector. Although this program officially terminated in June 1985, under our methodology, benefits are still accruing from these grants and, in fact, grants were still being provided in 1986. For the discount rate, we used the average commercial bond rate in the Netherlands for each year in which grants were provided. We took the sum of the 1985 benefit from all of these grants and divided it by total sales of greenhouses during the review period. This resulted in an estimated net subsidy of 0.80 percent *ad valorem*.

D. Aids for the Reduction of Glass Surface

Petitioner alleges that producers of cut flowers may benefit from the Government of the Netherlands' provision of aid for the destruction of unprofitable greenhouses.

As with the Glasshouse Enterprises Program discussed above, government officials stated that the Aids for the Reduction of Glass Surface program was part of a national energy conservation policy developed by the Ministry of Economic Affairs, under which other government ministries develop and implement specific objectives and programs for the particular sectors or groups falling under their jurisdiction. While there may be a general national energy conservation policy, we saw no evidence of a coordinated national program under which the Aids for the Reduction of Glass Surface program was funded or administered, nor could we tie the funds authorized under this program to ministerial budget allocations for energy activities.

The Aids for the Reduction of Glass Surface program was designed to increase the energy efficiency of glasshouses by dismantling existing glass and replacing it with modern, energy-saving glass. The expansion of the existing facility was prohibited. Grant recipients were required to sign an agreement with the Ministry of Agriculture and Fisheries stating that they would not increase the total glass surface area for a period of five years. Only glasshouse operators who had an approved energy investment plan under the Glasshouse Enterprises Program (see Section I.C. of the notice) could apply for assistance for reducing glass surface area.

Applicants could obtain a grant of f12 per square meter of glass, up to a maximum of 15 percent of their total acreage, and up to a maximum acreage of 1,500 square meters. Payment of the grant was made upon completion of the dismantling. The program began on November 1, 1982, and terminated on November 1, 1984. Applications were not accepted after November 1, 1984; however, grants were paid out after November 1, 1984, for projects approved prior to that date. The dismantling of glass projects were supposed to be completed prior to January 1, 1985. At verification, we found that grants are still being paid out under this program.

Because this program was available only to glasshouses, we determine that it was limited to a specific enterprise or industry or group of enterprises or industries and, as such, is countervailable.

We calculated the benefit from these grants according to the grant methodology outlined in the Subsidies Appendix. For each of the years 1983 to 1985, we took the total amount of grants provided to all Dutch greenhouse growers under this program. We allocated these amounts over ten years, which is the average useful life of renewable physical assets in the agricultural sector. Although this program terminated on November 1, 1984, under our methodology, benefits are still accruing from these grants. We used as the discount rate, the average commercial bond rate in the Netherlands for each year in which grants were provided. We took the sum of the 1985 benefit from all of these grants and divided it by total sales of greenhouses for the review period. This resulted in an estimated net subsidy of 0.01 percent *ad valorem*.

E. Steam Drainage Systems

Petitioner alleges that the Government of the Netherlands provides funds to greenhouse owners who install steam drainage systems and/or gas fired mobile furnaces.

During verification we found that the purpose of this program is to encourage efficient and effective methods of land disinfecting other than the use of methylbromide. In January 1981, the Government of the Netherlands banned the use of methylbromide as a means of soil disinfection due to the potential health hazards caused by the chemical. In December 1981, the Ministry of Agriculture and Fisheries established a program making available cash grants to encourage the use of steam drainage as an alternative method of soil disinfection for greenhouses. At verification, we learned that greenhouse growers are the only users of steam drainage systems. Under this program, a greenhouse grower could receive a grant of up to 25 percent of the amount of his investment in steam drainage systems with a maximum of f1.50 per square meter of land on which the steam drainage system was installed.

Although the program began in December 1981, Article 7 of the applicable decree allowed for the retroactivity of the program to January 1, 1981 (the date the government banned the use of methylbromide). Greenhouse growers who had already switched to steam drainage systems prior to January 1, 1981 did not receive any assistance under this program. The program did not terminate on September 1, 1983, as originally scheduled, but was extended for one year and terminated on September 1, 1984.

Because this program was only available to greenhouse growers, we determine it was limited to a specific enterprise or industry, or group of enterprises or industries and, as such, is countervailable.

We calculated the benefit under this program according to the grant methodology outlined in the Subsidies Appendix. For each of the years 1982 to 1984, we took the total amount of grants provided to all Dutch greenhouse growers under this program. We allocated these amounts over ten years, which is the average useful life of renewable physical assets in the agricultural sector. Although this program terminated on September 1, 1984, under our methodology, benefits are still accruing from these grants. We used as the discount rate, the average commercial bond rate in the Netherlands for each year in which grants were provided. We took the sum of the 1985 benefit from all of these grants and divided it by total sales of greenhouses during the review period. This resulted in an estimated net subsidy of 0.01 percent *ad valorem*.

F. Guarantee Fund for Agriculture

Petitioner alleges that the Government of the Netherlands provides guarantees for loans awarded by banks to certain farmers through a fund designed to promote the development of agriculture.

The official name of this program is the Stichting Borgstellingsfonds voor de Landbouw (Foundation Security Fund for Agriculture). The purpose of the Foundation is to enable creditworthy

farmers to obtain loans when they do not possess sufficient collateral. To receive a loan guarantee under this program, the borrower works in tandem with the bank. The bank provides a loan for which adequate security is available. If this amount is not sufficient to meet the borrower's needs, the bank applies to the Foundation for a guarantee, on behalf of the borrower. If granted, the guarantee applies only to the portion of the loan not originally approved by the bank.

According to the response, and based upon our findings at verification, this program is available to virtually all agriculture. However, during verification, we found that horticulture receives a disproportionate share of loan guarantees under this program. Taking horticulture as a percent of all agriculture, based upon a review of the value of guaranteed loans granted in each year 1982 to 1984, we found that horticulture received approximately 47 percent of the value of all guaranteed loans. Horticulture represents approximately 24 percent of total agricultural production value, as reported in the statistical review of Dutch horticulture, *Tuinbouwcijfers 1986*. In addition, in 1985, horticulture accounted for 52 percent of the total value of loan guarantees awarded. The consistent pattern over the years of horticulture receiving almost 50 percent of the funding even though it accounts for only 24 percent of the value of agricultural production leads us to conclude that the Guarantee Fund is administered in such a way as to confer a benefit on a specific group of industries (*i.e.*, horticulture).

To calculate the benefit under this program, we would normally take the difference between the guarantee fee, if any, paid under the program and the fee paid for commercial loan guarantees, and multiply the difference by the total value of guaranteed loans to horticulture outstanding during the review period. However, during verification we found that there are no commercial loan guarantees available in the Netherlands. Therefore, as best information available, we took the difference between the interest rate in 1985 on the guaranteed loans and on loans secured by equipment and/or accounts receivable, as reported by the Rabobank Nederland (which provides almost all of the loans guaranteed under this program and which is the major source of financing for the agricultural sector in the Netherlands). We multiplied this amount by the total outstanding value of guaranteed loans to horticulture in 1985. We then divided this amount by the value of total horticulture sales during the review period, as reported by the auction houses. This resulted in an estimated net subsidy of 0.04 percent *ad valorem*.

II. Programs Determined Not To Confer Subsidies

We determine that subsidies are not being provided to producers or exporters in the Netherlands of cut flowers under the following programs:

A. Glasshouse Enterprises Research Grants

Petitioner alleges that producers of cut flowers in the Netherlands are benefitting from grants provided by the Ministry of Agriculture and Fisheries to conduct research pertaining to energy conservation.

During verification, we found that the Ministry of Agriculture appropriated a total of f30 million for research and development in energy conservation and energy saving devices. We reviewed publications and a law which show that the results of the research were always made public.

Because the results of the research conducted with these grants are published and made available for public use, we determine this portion of the Glasshouse Enterprises Program not to be countervailable.

B. Funding of Interest on Loans

Petitioner alleges that the Government of the Netherlands provides funding of interest on loans under a program to encourage the modernization of certain agricultural and horticultural ventures.

This program is provided for under a regulation entitled, "Besluit Structuurverbetering Landbouwbedrioven" (Decree for Structural Improvement of Agricultural Enterprises). The program is designed for "developmental enterprises" (*i.e.*, those that show good prospects for healthy growth) and is administered by the Foundation for Development and Reorganization in Agriculture (O & S).

During verification, we found that the purpose of this program is to improve farm efficiency with the aim of raising the yearly income of farm workers. Towards this aim, the O & S pays a portion of the interest on loans for approved investment projects. The most recent amendment to the law governing this program states that the intent is to improve quality, diminish production costs, improve working conditions, save energy, and to focus on environmental investments, especially manure storage programs. Eligibility for the program is based on the yearly income of the farm owner's employees; if below a certain level, then the farm owner becomes eligible to receive the interest subsidy on loans for projects to meet the program's objectives.

According to the government response, the funding of interest on loans is available and provided to all agriculture, except for one exclusion and two limitations. No support is currently given for expansion in poultry; pig farming investments must abide by the rule to utilize 35 percent of the needed fodder from the farm's own production; and expansion in dairy farming is restricted.

During verification, we confirmed that benefits under this program are provided to virtually all agricultural activities and that the only exception involves poultry farmers, who are excluded due to surplus production of eggs; pig and dairy farmers are eligible if they comply with certain restrictions. The mere exclusion of one narrow type of agricultural activity (*i.e.*, poultry farming) does not automatically render this program limited to a specific enterprise or industry, or group of enterprises or industries.

At verification we also found that this program has a definite set of eligibility criteria based upon the farm worker's income level, and a definite formula for determining the amount of interest funding to be provided. The existence of eligibility criteria under which virtually all farmers are eligible indicates that the program is not administered in such a way as to make it limited to a specific enterprise or industry, or group of enterprises or industries.

Furthermore, based upon a review of the most recent five-year period for which data are available, taking horticulture as a percent of all agriculture, horticulture received a share of the approved amounts of funding of interest on loans commensurate with its percentage share of total agriculture production value, minus the total production value of the poultry industry. Therefore, we find this program not to be countervailable.

III. Programs Determined Not To Be Used

We determine that the producers or exporters in the Netherlands of cut flowers did not use the following programs:

A. Investment Incentive (WIR)—Regional Program

Petitioner alleges that, under the Investment Incentive Program (Wet Investerings Rekening-WIR), bonus premiums for regional investments are given to producers or exporters of cut

flowers in the Netherlands. Financial assistance conferred under the WIR regional program was found to be countervailable in the *Final Countervailing Duty Determination: Dextrines and Soluble or Chemically Treated Starches Derived from Corn Starch from the European Community* (45 FR 18414, March 21, 1980).

At verification, we found that the Regional Planning Premium (ROT) and the Special Regional Premium (BRT) of the WIR program provided tax credits, over and above the basic WIR credit, as incentives for investments in the northern and eastern sections of the country. We also found that agriculture was excluded from the ROT and BRT in 1982, and both programs were terminated in 1983.

According to the response submitted by the Government of the Netherlands, and based upon our findings during verification, the WIR programs were not used by Dutch flower growers.

B. Loans at Preferential Interest Rates

Petitioner alleges that the National Investment Bank may provide loans on terms inconsistent with commercial considerations to producers or exporters of cut flowers in the Netherlands. Petitioner also contends that at least two regional development companies, the Northern Development Company and the Limburg Institute for Development and Finance, offer loans and share capital for investments in the northern development area and in the southern Limburg development area, respectively.

During verification we found that the National Investment Bank (NIB) issues long-term loans to financially sound companies which lack sufficient capital. Commercial banks, private investors, and the government jointly participate in the NIB, and the government may guarantee the loan principal and interest in certain cases, *e.g.*, establishment of new industrial enterprises in regions designated for economic stimulation. The possible subsidization of interest costs applies solely to new industries to be established in regions designated for economic stimulation.

During verification we found that both the NIB and the provincial development companies are geared toward industrial concerns. We saw no evidence that flower growers or auctions received loans under these programs.

C. Energy Saving Aids

Petitioner alleges that the Ministry of Economic Affairs provides funds for projects which promote energy conservation (*e.g.*, wind or solar installations). Petitioner also states that the Ministry offers loans for research and development, under which repayment is waived for unprofitable research or unsuccessful projects.

At verification, government officials contended that the Energy Savings Aids program is the national energy conservation policy of the Government of the Netherlands, developed by the Ministry of Economic Affairs, and under which other government ministries develop and implement specific objectives and programs for the particular sectors or groups falling under their jurisdiction. They stated that the Glasshouse Enterprises and Reduction of Glass Surface Area programs fall under the general category of Energy Savings Aids applicable to greenhouse growers. As noted above, we saw no evidence of a coordinated national program under which these programs were funded. In addition, we found no evidence that Dutch flower growers received any energy savings assistance other than that provided under the Glasshouse Enterprises and the Aids for the Reduction of Glass Surface programs.

D. Landbankregulation

Petitioner alleges that the Government of the Netherlands provides financing for acquiring land in the agricultural sector under the Landbankregulation program. During verification we found that the Landbankregulation program applies only to arable crop and dairy farming.

Petitioner's Comments

Comment 1: Petitioner contends that the Department significantly understated the value of benefits conferred by programs which it preliminarily determined to be countervailable because the Department assumed, in comparing the total benefit of a program with the value of all greenhouse production, that the subsidy equally affects all areas of greenhouse production. Petitioner argues that, because yields for flowers are lower than that for other greenhouse plants, more greenhouse acreage is needed to produce flowers and, therefore, equal allocation over all greenhouse production would understate the effect of the subsidy.

DOC Position: In the programs we are examining, the Government of the Netherlands does not differentiate benefit amounts provided to greenhouse growers according to the types of products produced in greenhouses. Therefore, in cases where we use aggregate data in evaluating benefits, as in this investigation, it is usually not possible to isolate the benefits accruing solely to the products under investigation since the programs usually are not provided specifically to the products we are investigating. When the purpose of the programs is to assist greenhouse growers, and when the amounts of the benefits are not segregable between greenhouse growers who produce flowers and greenhouse growers who produce other products, we consider that the total benefit is appropriately assigned to the total value of all greenhouse sales, and that this assignment reflects the value of the subsidy attributable to flowers grown in greenhouses.

Comment 2: Petitioner contends that the Department should continue to use best information available regarding natural gas provided at preferential rates because the Government of the Netherlands has provided no further information since its supplemental questionnaire response and that any other information submitted so late in the investigation would be untimely and accordingly should be rejected.

DOC Position: We disagree. For purposes of our final determination on the natural gas program, information obtained by the Department during verification and accurately reported in the amended responses makes the use of best information available unnecessary.

Comment 3: Petitioner contends that the Aids for the Creation of Cooperative Organizations program is limited to a specific group of enterprises of industries because, according to figures provided in the response, a comparison of sums awarded to auction houses with the total amounts awarded under the program shows that most probably the auction houses got most, if not all, of the monies bestowed in the Netherlands under the part of the program which is specifically intended for the flowers and plants sector. Furthermore, they contend that, in the Netherlands, this program is only available to a few sectors of agriculture and cite EC Regulation 355/77.

DOC Position: While we have found the Aids for the Creation of Cooperative Organizations program to confer a subsidy, we did so on the basis that the Government of the Netherlands, through the selection process, limited program proposals to specific agricultural activities, and not because auction houses may have received a significant amount of the funding under the approved program for flowers and plants. See Section I.B. of the notice.

Comment 4: Petitioner contends that, with respect to Aids for the Creation of Cooperative Organizations program, because the largest part of the

production of the Dutch greenhouse growers is exported, and because these products are sold through auction houses for export, export promotion must be viewed as a *de facto* consequence of the subsidizing of the auction houses. In support of their argument, petitioner cites "The Commerce Department speaks on Import Administration and Export Administration 1984" at 315–316. ("Thus, Commerce frequently talks of an export subsidy as one which operates and is intended to stimulate export rather than domestic sales or is contingent upon export performance.")

DOC Position: We disagree. The fact that export sales may be a consequence of this program does not mean that the Aids for the Creation of Cooperative Organizations program constitutes an export subsidy. See *Final Negative Countervailing Duty Determination: Certain Softwood Products from Canada* (48 FR 24159, 24167, May 31, 1983).

Comment 5: Petitioner contends that under the Guarantee Fund for Agriculture, the horticultural and floricultural sectors received a disproportionate share of benefits and that the program is, therefore, countervailable. Petitioner cites the *Preliminary Affirmative Countervailing Duty Determination: Certain Textile Mill Products and Apparel from Thailand* (49 FR 49661, December 21, 1984) in support of its argument. Furthermore, petitioner contends that the Department's interpretation on general availability is contrary to law as formed in *Cabot* v. *United States* (620 F. Supp. 722 (1985)).

DOC Position: Based upon our analysis of all information submitted, we have determined that the Guarantee Fund for Agriculture is administered in such a way as to provide a disproportionate share of benefits to horticulture. See Section I.F. of the notice.

Comment 6: Petitioner contends that the Funding of Interest on Loans program is countervailable under existing Department interpretation as it provides a subsidy which *de facto* benefits disproportionately the horticultural sector. In addition, petitioner argues that the Government of the Netherlands has admitted that certain sectors of agriculture, such as the poultry sector, pig farming and dairy farming have been excluded from the program or that benefits for those sectors have been restricted.

DOC Position: We disagree. During verification, we found that benefits under this program are provided to virtually all agricultural activities. The only exception involves poultry farmers who are excluded due to surplus production of eggs; pig and dairy farmers are eligible if they comply with certain restrictions. We maintain that the exclusion of only one narrow type of agricultural activity (*i.e.*, poultry farming) does not render this program limited. Furthermore, we found no evidence at verification that would lead us to conclude that horticultural activities received a disproportionate amount of benefits under this program.

Comment 7: Petitioner contends that the February 13, 1985 EC decision concerning Gasunie's and the Landbouwschap's natural gas pricing provisions was based on the fact that the Dutch natural gas tariff for flower growers was preferential, and not just the ceiling price on natural gas, as claimed by respondents. Furthermore, petitioner argues that the Department has received no information from the Government of the Netherlands to show that the preference has been eliminated. Therefore, the Department should continue to use best information available for the final determination.

DOC Position: The EC decision of February 13, 1985 states that "[T]he advantage of the new system to a horticultural holding is thus as follows:

—4.1 cents/cubic meter for the fourth quarter of 1984,

—5.5 cents/cubic meter for the first quarter of 1985."

This "advantage" represents the difference between the gas price under the 1984 contract, effectively the ceiling price in the fourth quarter of 1984 and the first quarter of 1985, and the gas price that would have been applicable had the 1983 contract been in effect during those two quarters. Moreover, the 1983 contract between Gasunie and the Landbouwschap, signed after consultations between the EC and the Government of the Netherlands, did not contain a ceiling price provision. Therefore, the EC's February 13, 1985 decision objected only to the new ceiling price provision in the 1984 contract.

With respect to petitioner's argument that the Department has received no new information to show that the preference has been eliminated, the Government of the Netherlands submitted information during verification which we verified and which clarifies the terms of the contract between Gasunie and the Landbouwschap. We have based our analysis on this verified information.

Comment 8: Petitioner contends that respondents' argument that because the Government of the Netherlands did not direct the sale of natural gas to the Dutch flower growers at low prices, there can be no subsidy, is contrary to both judicial decision and legislative history which establish that government direction is not a requirement for a finding of subsidization. In addition, petitioner contends that, in fact, the Government of the Netherlands owns 50 percent of Gasunie and retains the right to approve prices and terms of delivery for natural gas and that these facts should lead the Department to conclude that the Dutch Government does indeed play a role in setting natural gas prices.

DOC Position: We agree that the Government of the Netherlands plays a significant role in setting gas prices. See Section I.A. of the notice.

Comment 9: Petitioner contends that respondents' argument that any benefit from low natural gas prices was not conferred on a "specific enterprise or industry" is contrary to information submitted by respondents. They argue that this information indicates that benefits accrue only to one part of the entire agriculture sector and that this sector constitutes a specific enterprise or industry, or group of enterprises or industries.

DOC Position: We agree. See Section I.A. of the notice.

Comment 10: Petitioner contends that respondents' argument, that natural gas prices charged to Dutch flower growers were not preferential because Gasunie was forced to bring down its gas price to convince flower growers not to shift to oil heat, ignores the evidence of record which shows that the tariff charged horticultural users of natural gas was not justified on economic grounds.

DOC Response: The evidence on the record shows that the provision in the contract which stipulates the zone "d" plus 0.5 guilder cents rate for greenhouse growers is the result of negotiations based on each party's interests and is justified on economic grounds. Therefore, the contracted zone "d" plus 0.5 guilder cents rate cannot be considered a preferential price to greenhouse growers because it is a negotiated price that is directly linked to the price paid by other gas consumers which, in turn, is linked to the world market price of heavy or light fuel oil. See Section I.A. of the notice.

Comment 11: Petitioner contends that respondents' argument that benefits similar to those provided under the Reduction of Glass and the Glasshouse Enterprises programs were available in all areas or industry as part of a national policy of energy conservation and should, therefore, be found generally available would require a sweeping expansion of the general availability test, so that almost no

benefit would be found countervailable. They further contend that this interpretation would contradict the underlying purpose of the law, which is to offset the unfair advantage subsidies provide a foreign manufacturer over its U.S. competitors.

DOC Position: We agree that the these programs are countervailable. The bases for our determinations are fully addressed in Sections I.C. and I.D. of the notice. See also DOC Position to Respondents Comment 1.

Comment 12: Petitioner argues that, with respect to the Glass Reduction and Glasshouse Enterprises programs, although these programs allegedly have been terminated, grants received under these programs continue to benefit the recipients during the review period so that their value must be included in calculating the *ad valorem* duty rate.

DOC Position: We agree. See DOC Position to Respondents' Comment 24.

Comment 13: Petitioner argues that, although the Dutch law prohibiting the use of methylbromide may have forced the Dutch growers to use other methods of soil sterilization, it did not require them to use steam drainage systems. By making available grants for this purpose, the Government of the Netherlands awarded a benefit to greenhouse growers who installed such systems, relieving them of part of their operating costs.

DOC Position: We agree. See DOC Position to Respondents' Comment 3.

Comment 14: Petitioner contends that the questionnaire response does not indicate that there are no flower growers in WIR eligible areas and is surprised that there would not be a single flower grower in the northern and eastern sections of the Netherlands which are the regions targeted to receive benefits under the program.

DOC Position: During verification, we found that there are, in fact, some flower growers located in areas eligible for tax benefits under the WIR regional programs (ROT and BRT). However, we also found that these programs were terminated in 1983 and were not used by flower growers.

Comment 15: Petitioner contends that verification of the Aids for the Creation of Cooperative Organizations program reveals that the EC enjoys much discretion in deciding whether or not to award grants and how much to award. They further contend that different regions are subject to different rates and that these are maximum rates only, and allow for considerable discretion on the part of the grant authority. Thus, they maintain that the Aids for the Creation of Cooperative Organizations program could also be considered a regional subsidy. In support of this argument, petitioner cites *Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 FR 25097, June 17, 1985) *(Live Swine)* in which they contend that the Department found all benefits under an Ontario tax program to constitute a regional subsidy even though every farmer within the province was eligible to receive benefits at a certain level of income, while farmers in specified regions were eligible at a lower income level. Lastly, petitioner contends that the Department was unable to verify the nature of the criteria employed or the exact effect of the selection process. Therefore, they contend that the Department should determine that these grants are countervailable.

DOC Position: Although we found during verification at the EC that certain regions within the Community are eligible for higher grant contributions than others, there are no differing eligibility levels for regions in the Netherlands. Therefore, regionality is not the basis of our determination that this program is countervailable. We found at verification that the Government of the Netherlands limits its selection of programs and projects to be sent to the EC for consideration. Furthermore, we were unable to verify any standard criteria applied in the approval process of member states' sectoral programs and the individual investment project applications under the sectoral programs. For these reasons, we have found that the grants given under this program are limited to a specific group of enterprises or industries within the agricultural sector and, as such, are countervailable.

Furthermore, petitioner's argument that the existence of regional preferences should lead us to conclude that the entire program constitutes a regional subsidy is incorrect. With regard to the Ontario Tax Reduction Program discussed in *Live Swine*, because information was unavailable on specific benefits provided to individual commodity groups, or within specific regions of Ontario, we used as best information available, the total payout under the program in 1984 to swine production. Furthermore, in the *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from Canada* (52 FR 2134, January 20, 1987), the Department verified that all farmers throughout Ontario were eligible for this tax program if they had an annual income of $8,000. Farmers located in specific regions were eligible if they had an annual income of $5,000. We found that the receipt of benefits under the $8,000 criterion was not limited to a specific enterprise or industry, or group of enterprises or industries, or to companies located in specific regions.

Respondents' Comments

Comment 1: The Government of the Netherlands contends that energy conservation programs, such as the Decree for Energy Savings Measures in Horticulture under Glass and the Decree for Business-Reduction of Horticultural Glasshouses, as well as other energy conservation programs available in the Netherlands, were designed to conserve energy, and not to benefit Dutch manufacturers, homeowners or growers. They contend that the "targets" of the implementation of these programs were not specific industries or any group favored by the government. Rather, the policy and its implementation were aimed at all significant energy consumers throughout the Dutch economy.

DOC Position: At verification, the Government of the Netherlands was unable to provide documentation linking these programs directly to a national energy program. Officials stated that they do not maintain central records on all energy conservation programs, nor is there one central budget for all energy programs within the country. Each government ministry approves the budget for energy programs implemented under its jurisdiction. Because the government was unable to document the inclusion of the Glasshouse Enterprises and the Reduction of Glass Surface programs as part of an overall national energy program, or even an agriculture-wide energy program, and because these programs are available only to greenhouse growers, we find that they are limited to a specific enterprise or industry, or group of enterprises or industries and, therefore, are countervailable.

Comment 2: The Government of the Netherlands contends that the Subsidies Code recognizes that subsidies other than export subsidies are widely used as important instruments for the promotion of social and economic policy objectives, and that it is not the intent to restrict the rights of signatories to use such subsidies to achieve important policy objectives. Therefore, they contend that, in determining the effect of the subsidy, proper consideration should be given to the nature of the subsidy and, as such, the programs designed chiefly to promote energy savings should not be considered countervailable.

DOC Position: The language of Article 11 of the Subsidies Code does not

prejudice the right of any signatory to the Code to countervail against non-export subsidies. The fact that certain subsidies are not specifically prohibited by the Code is not relevant as to whether such subsidies confer a countervailable benefit in a specific case. In this investigation, we have carefully considered all aspects of each program under investigation and have made decisions consistent with our methodology and prior determinations.

Comment 3: The Government of the Netherlands contends that the objective of the Steam Drainage Program was to protect the health, environment and social needs of its citizens rather than to bestow any benefit on greenhouse growers. They contend that, as a consequence of this program, greenhouse growers were economically worse off than before this measure was taken.

DOC Position: We disagree. The purpose of the Steam Drainage program was to provide financial assistance to greenhouse growers to offset the cost of complying with the ban in January 1981 on methylbromide as a means of soil disinfection. The ban itself, and not the program, fulfilled the objective of protecting the health, environment and social needs of the population. The argument that greenhouse growers were economically worse off than before the ban is irrelevant in that growers would have had to comply with the ban absent the Steam Drainage program. Therefore, this program is found to provide a direct benefit specifically to greenhouse growers.

Comment 4: With regard to programs which have officially been terminated, the Government of the Netherlands contends that any programs terminated by a signatory cannot be used as a basis for countervailing measures to be applied after the removal of the program.

DOC Position: We disagree. Although these programs have been terminated, we found at verification that grants were still being provided under these programs after the review period. In addition, these grants were awarded to individual recipients on a one-time only basis and were not recurring in each year during the existence of the programs. Therefore, under our grant methodology, we allocate these grants over the average useful life of renewable physical assets in the industry. Under this methodology, grants continue to yield benefits even after the termination of the programs.

Comment 5: The Government of the Netherlands, in supporting a statement submitted by the EC, contends that, according to the relevant provisions of the Subsidies Code, any request for countervailing duties must be made "by or on behalf of the industry affected" and that it must be supported by producers accounting for a major proportion of the like product. The Government of the Netherlands and the EC state that they find no evidence for these conditions having been fulfilled in this investigation and that the Floral Trade Council did not even allege that it represented a majority of the U.S. flower producers of the "like" product.

DOC Position: As the Department has previously stated, see, *e.g., Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada* (51 FR 10041, March 24, 1986), neither the Act nor the Commerce Regulations requires a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case. Where domestic industry members opposing an investigation provide a clear indication that there are grounds to doubt a petitioner s standing, the Department will review whether the opposing parties do, in fact, represent a major portion of the domestic industry. In this case, we have not received any opposition from the domestic industry.

Comment 6: The Government of the Netherlands contends that the Department erred in its decision in the preliminary determination to use, as best information available, the EC decision of February 13, 1985, regarding the investigation by the EC into alleged preferential natural gas prices for Dutch horticulturists. The Government of the Netherlands contends that the Department did not take into account that the Netherlands government appealed this decision and that the case is still pending. Furthermore, they contend that the Department failed to note that the EC in its decision accepts the principle of differentiation of gas tariffs. The Government of the Netherlands argues that the dispute centered around the maximum price clause in the 1984 agreement and that this price ceiling has now been removed and was fully discussed at verification.

DOC Position: We agree that there is reason to differentiate gas tariffs based on demand, ability and likelihood of customers to switch to alternative energy sources. Our decision on this program is based on the special ceiling price given only to greenhouse growers. As stated in Section I.A. of the notice, we have no evidence that the Landbouwschap has agreed to the withdrawal of the ceiling price in the contract by Gasunie.

Comment 7: The Government of the Netherlands contends that the Department erred in its statement in the preliminary determination that the Government of the Netherlands determined the price of natural gas set by Gasunie. They contend that the government has the right to approve tariffs set by the Gasunie, but only after the agreement with the Landbouwschap is reached.

DOC Position: The Government of the Netherlands owns 50 percent of Gasunie and the Minister of Economic Affairs has final approval of the tariff schedules. These two factors indicate that the Government of the Netherlands has a significant role in natural gas sales and pricing; such a role, in effect, indicates that the provision of a special ceiling price on natural gas purchased by greenhouse growers is provided or required by government action.

Comment 8: The Government of the Netherlands contends that they have a right to prescribe minimum prices for natural gas on the basis of the market value of the gas and that this power has been used occasionally in relation to gas prices for households but never in relation to gas for industrial users.

DOC Position: The issue in this case is the maximum ceiling price set by or through government action in the contract between Gasunie and the Landbouwschap, and not minimum prices for natural gas.

Comment 9: The Government of the Netherlands contends that, contrary to the findings of the verification team, the price charged by Gasunie for natural gas to the greenhouse growers has never been below the contract price and, in three quarters of 1985, the ceiling price was the contract price.

DOC Position: While the ceiling price is in the contract, we have found that the provision of gas at the ceiling price constitutes the provision of a good at a preferential rate. See Section I.A. of the notice.

Comment 10: Respondents contend that if the Department were to find that the gas price ceiling did bestow a countervailable benefit on greenhouse growers, the Department now has verified that the program was terminated over a year prior to the preliminary determination and, therefore, no estimated countervailing duties should be calculated.

DOC Position: We disagree. We do not consider the unilateral withdrawal of the ceiling price by Gasunie to constitute a program-wide change because no new contract has been

signed by the parties agreeing to the withdrawal, and because the current contract still includes the maximum ceiling price for greenhouse growers. See Section I.A. of the notice.

Comment 11: Respondents contend that the price of gas to horticulturists was determined through arm's length negotiations between Gasunie and the Landbouwschap and is not provided or required by government action. They further contend that the existence of a farmers union to negotiate gas prices on behalf of all growers is a natural extension of the general cooperation among growers.

DOC Position: These arguments are addressed in Section I.A. of the notice.

Comment 12: Respondents argue that the Landbouwschap is a union which represents and defends the interest of all agricultural producers, not simply those of a specific sector of agriculture. Therefore, they contend that the gas prices negotiated between the Landbouwschap and Gasunie were not industry specific.

DOC Position: We agree that the Landbouwschap has been established to represent the interests of all agriculture. However, in negotiations for a contract with Gasunie, the Landbouwschap lobbied for lower gas prices only for horticulturalists (*i.e.*, greenhouses). Therefore, any benefit obtained by the Landbouwschap benefits only a specific industry.

Comment 13: Respondents argue that the situation which compels Gasunie to utilize a different formula for determining gas prices charged to Dutch greenhouse growers than that applied to individual producers is based entirely on normal commercial, rather than government factors. They contend that, since Dutch greenhouse growers are much more ready to shift from gas to oil or coal, prices charged to those producers are more sensitive than those charged to individual industrial producers.

DOC Position: We agree that it may be in the commercial interest of each party to negotiate a contract under which greenhouse growers pay a price that is directly tied to published tariff prices since these tariff prices are based on level of consumption and are set according to the world market prices of heavy and light fuel oil. However, when the government agrees that this same group will not have to pay the published tariff rate if this rate increases above a ceiling price, and when the government does not provide a ceiling price to any other users, the ceiling price constitutes price discrimination by the government.

Comment 14: Respondents argue that the programs for Glass Reduction and Glasshouse Enterprises were part of a nationwide program to promote energy conservation and protect the health, environment, and social needs of its citizens and that the signatories to the Subsidies Code recognize a nation's right to institute such programs. Furthermore, they contend that a general energy-saving policy must be implemented differently in each sector, given that similar incentives will not work for both homeowners and for industry.

DOC Position: We disagree. See DOC Position to Respondents' Comments 1 and 2.

Comment 15: Respondents argue that the Department has verified that both the Glass Reduction and Glasshouse Enterprises programs have been terminated and that there is, therefore, no basis for countervailing these programs for future exports.

DOC Position: We disagree. While we have verified that these programs were terminated prior to the review period, grants are still being disbursed under these programs. In addition, these grants were awarded to individual recipients on a one-time only basis and were not recurring in each year during the existence of the programs. Therefore, under our grant methodology, we allocate these grants over the average useful life of renewable physical assets in the industry. Under this methodology, grants continue to yield benefits even after the termination of the programs.

According to our methodology, for each year in which grants were provided, if the total value of all grants in any one year exceeds 0.5 percent of relevant total sales in that year, the grants shall be allocated over the average useful life of renewable physical assets in the industry, as determined under the U.S. Internal Revenue Service's Asset Depreciation Range System. Therefore, where grants under all programs exceeded the 0.5 percent threshold in each year, these grants were allocated over ten years, in accordance with our methodology. If, however, grants provided under all programs were found to be less than 0.5 percent for each year, grants disbursed in that year under both the Glasshouse Enterprises and Reduction of Glass Surface programs properly would have been expensed in the year of receipt.

Comment 16: Respondents argue that the preliminary determination failed to take into consideration that the Glass Reduction and Glasshouse Enterprises programs are available to all greenhouse operators, whether fruit, vegetable, flower, tree or plant, and that the Department's calculation does not make adequate allowance for the wide coverage of this program.

DOC Position: We disagree. These programs were found to be limited to a specific subset of agriculture, specifically greenhouse growers, and as such we consider benefits to be limited to a specific group of enterprises or industries, and, therefore, countervailable. See also DOC Position to Respondents' Comment 20.

Comment 17: Respondents contend that flower growers received no benefit through the Steam Drainage program because the governmental allowance for steam drainage investments only partially offsets an economic disadvantage that the government imposed specifically on greenhouse growers. They cite *Certain Steel Products from Belgium* (47 FR 39304, September 7, 1982) in which they contend that the Department did not countervail aid to workers who were retired early because the government had merely relieved the companies of an extraordinary burden it had imposed under a restructuring program.

DOC Position: We disagree. (See DOC Position to Repondents' Comment 3.) In addition, with regard to *Certain Steel*, we found the Labor Assistance (Pre-Pension) Program not to be countervailable because benefits were not being provided to companies *per se*. Rather, the companies merely acted as a conduit for the provision of benefits to the displaced workers as a result of the restructuring. Therefore, the displaced workers, and not the companies, were the recipients of benefits under the Labor Assistance Program. In this investigation, benefits provided to growers directly reduce their costs to implement steam drainage systems.

Comment 18: Respondents contend that information verified by the Department confirmed the general availability of the Guarantee Fund and Interest Funding and that, contrary to petitioner's arguments, no *de facto* limitation was found.

DOC Position: See Sections I.F. and II.B. of the notice in which we have addressed the issues of availability and proportionality of benefits provided under the Guarantee Fund for Agriculture and the Funding of Interest on Loans programs.

Comment 19: Respondents contend that information verified by the Department confirmed that flower growers did not benefit from the WIR regional programs, Loans at Preferential Interest Rates, Industrial Energy Savings Aids, or Landbankregulation.

DOC Position: We agree.

Comment 20: Respondents contend that, if the Department can characterize the product of one flower, the rose, as an industry (*Agrexco, Agricultural Export Co., Ltd.* v. *United States*, 9 CIT_____, 604 F. Supp. 1238 (1985)), then the separate industries making up the horticulture "industry" contain over 60 categories such as cut flowers, shrubs, trees, apple orchards, etc. They contend that the industries classified by the Department as "greenhouse growers" and "horticulturists" are, therefore, too broad a class and should not be properly considered an industry or a specific group of industries. Therefore, they contend, any benefit to "greenhouse growers" or "horticulturists" should not give rise to countervailing duties.

DOC Position: We disagree. Although the horticulture and greenhouse industries contain many separable categories of products, the Department considers these industries to be a specific subset of all agriculture and not so broad as to consider them more than a specific enterprise or industry, or group of enterprises or industries under the countervailing duty law. The Department consistently has found benefits provided to specific subsets of agriculture to be limited. See *e.g*, *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from Canada* (52 FR 2134, January 20, 1987), *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 FR 25097, June 17, 1985), and *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Lamb Meat from New Zealand* (50 FR 37708, September 17, 1985).

Comment 21: Respondents contend that the Department recognizes that price differences resulting from enhanced purchasing power, in this case the Landbouwschap, are not preferential under the law, even if the government has been the cause of the enhanced power. They cite *Industrial Nitrocellulose from France* (48 FR 11971, March 22, 1983) in support of their argument. They further contend that, in the present case, the enhanced purchasing power is entirely non-governmental and in itself cannot give rise to a countervailable preference.

DOC Position: We agree that price differences resulting from differences in purchasing power do not necessarily constitute "preferential rates." The provisions in the 1984 contract between the Landbouwschap and Gasunie, establishing the zone "d" plus 0.5 guilder cents gas rate for greenhouse growers, resulted from an arm's length negotiation based on the greenhouse growers' purchasing power and Gasunie's incentive to keep a high-volume customer. However, the provision of the ceiling price in the contract consitutes the provision of a good at a preferential rate specifically to greenhouse growers as opposed to other users. See Section I.A. of the notice.

Comment 22: Respondents contend that the Department correctly ruled that "large scale energy consumers" is not a countervailable category in *Certain Steel Products from the Netherlands* (47 FR 39372, September 7, 1982) and that the energy programs examined by the Department in the present investigation, Glass Reduction and Glasshouse Enterprises, fall squarely into this noncountervailable category.

DOC Position: We disagree. The program referred to in *Certain Steel Products from the Netherlands* was a program which provided assistance to all industries in the Netherlands to introduce new energy-saving technology for which funds are disbursed in a nondiscretionary manner. In that case, the Department found that a company receiving assistance under this program had received funds to purchase specialized computer control equipment which could be utilized by other industries such as the chemical industry and other large scale energy consumers. Therefore, respondents incorrectly interpreted that the Department ruled in that case that large scale energy consumers is not a countervailable category when, in fact, the Department found that the program itself was not limited to a specific enterprise or industry, or group of enterprises or industries.

Comment 23: Respondents contend that information verified by the Department confirmed the general availability of Aids for the Creation of Cooperative Organizations program and that petitioner has not and cannot provide evidence that the program is intended to stimulate exports or is contingent upon exports.

DOC Position: We disagree that our verification confirmed the general availability of this program. On the contrary, we found it to be administered in such a way as to be limited to a specific group of enterprises or industries within the agricultural sector (see Section I.B. of the notice). We agree, however, that this program does not constitute an export subsidy (see DOC Position to Petitioner's Comment 4).

Comment 24: Respondents contend that the Glass Reduction and Glasshouse Enterprises programs have been established for a period of years through on-going legislation and were clearly not exceptional in nature. Therefore, the Department should not impute a past benefit under these programs onto future sales.

DOC Position: We disagree. Although these programs were established for a period of years, grants to individual recipients were provided on a one-time only basis and were not recurring in each year during the existence of the programs. Therefore, for grants provided on a one-time only basis, the Department's methodology, which allows for the allocation of benefits over the average useful life of renewable physical assets in the industry, is the appropriate methodology to calculate the benefit from these two programs. See also DOC Position to Respondents' Comment 4.

Comment 25: Respondents contend that the figures to use for the export sales value is the FOB value, which represents the auction price plus the exporter's mark-up. They contend that it is the FOB value which the U.S. Customs Service uses for the entry value and this value is, therefore, a more appropriate representation.

DOC Position: At verification, respondents made this same argument. The verification team informed respondents that, if the information on the exporter's mark-up could be presented and verified, we would consider the information for use in our final determination. Respondents did not provide, nor did we verify, any information on the exporter's mark-up. Therefore, we cannot consider the FOB value for the export sales portion of the denominator.

Comment 26: Respondents contend that, if the Department were to find the natural gas program to be a subsidy, the annual, not the first quarter, gas price should be used to calculate the alleged gas price preference in 1985.

DOC Position: We have calculated an average annual price based on the quarterly price that greenhouse growers would have had to pay at the zone "d" plus 0.5 guilder cents rate, and compared this price to the average annual price actually paid by greenhouse growers during the review period. This difference constitutes the preference to greenhouse growers through the provision of the ceiling price.

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, as well as on-site inspection of one flower auction house and of two randomly selected companies, inspection of documents and ledgers, and tracing 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 entries of cut flowers from the Netherlands which are entered, or withdrawn from warehouse, for consumption on or after October 27, 1986. As of the date of publication of this notice in the **Federal Register**, the Customs Service shall require a cash deposit or bond of 3.48 percent *ad valorem* for each entry of this merchandise from the Netherlands.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted, as a result of the suspension of liquidation, will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing the Customs officers to assess countervailing duties on all entries of cut flowers from the Netherlands entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

January 27, 1987.

[FR Doc. 87-2130 Filed 2-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-337-601]

Final Affirmative Countervailing Duty Determination; Standard Carnations From Chile

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in Chile of standard carnations as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 2.25 percent *ad valoreum*. However, consistent with our stated policy of taking into account changes in programs that occur before our preliminary determination, we are adjusting the duty deposit rate to 12.25 percent *ad valorem* to reflect the commencement of the Simplified Drawback Program. We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of standard carnations from Chile, commencing on the date of publication of this notice in the **Federal Register**, that are entered, or withdrawn from warehouse, for comsumption, and to require a cash deposit or bond on entries of these products in the amount equal to the duty deposit rate.

EFFECTIVE DATE: February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen, Jessica Wasserman or Gray Taverman, 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, 377-1442, or 377-0161.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that there is reason to believe or suspect that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Chile of standard carnations. For purposes of this investigation, the following programs are found to confer subsidies.

- Stamp and Seal Tax Exemption for Exporters
- Export Rebate (Simplified Drawback)

We determine the estimated net subsidy to be 2.5 percent *ad valoreum*, and the duty deposit rate to be 12.25 percent *ad valoreum*.

Case History

On May 21, 1986, we received a petition in proper form from the Floral Trade Council filed on behalf of the U.S. industry producing standard carnations. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that producers or exporters in Chile of standard carnations receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on June 10, 1986, we initiated an investigation (51 FR 21953, June 17, 1986). We stated that we expected to issue a preliminary determination on or before August 14, 1986.

On June 25, 1986, the petitioner requested a full extension of the period within which a preliminary countervailing duty determination must be made pursuant to section 703(c)(1)(A) of the Act. On July 3, 1986, we issued a notice of postponement stating that the preliminary determination would be made on or before October 20, 1986 (51 FR 25084, July 10, 1986).

Since Chile is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Chile materially injure, or threaten material injury to, a U.S. industry. On July 7, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Chile of standard carnations (51 FR 25751, July 6, 1986).

On June 20, 1986, we presented a questionnaire to the Government of Chile in Washington, DC, concerning petitioner's allegations. We received the government and company responses on July 25, 1986, September 15, 1986, and September 26, 1986, from the Government of Chile, Coexflor Ltd., and Agricola Longotoma. Coexflor Ltd. is the exporter for Sociedad Agricola Flores Pochohay Ltda., Andres Ramirez Matte, Sociedad Agricola Los Molles Ltda., Juan Alberto Decombe, Sociedad Agricola Millary, Ltda., and Alberto Behn T., producers of standard carnations. Agricola Longotoma is both a producer and an exporter of standard carnations. We received responses from both the exporters and the producers of standard carnations.

On November 4, 1986, petitioner filed a request to extend the deadline date for a final determination in the countervailing duty investigation to correspond to the date of the final determination in the antidumping investigation, 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). The Department granted an extension of the deadline for the final determination in this countervailing duty investigation to January 12, 1987, the original deadline for the final determination in the antidumping investigation.

On December 22, 1986, respondents requested that the Department postpone the final determination in the antidumping duty investigation on standard carnations in accordance with section 735(a))(2)(A) of the Act. We granted this request and postponed our final antidumping duty determination until not later than January 26, 1987. 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, the deadline for the final countervailing duty determination on standard carnations from Chile was also postponed until January 26, 1987, to coincide with the revised date of the final antidumping duty determination (52 FR 1515, January 14, 1987).

Scope of Investigation

The products covered by this investigation are standard carnations currently provided for in item 192.21 of the *Tariff Schedules of the United States* (TSUS).

For purposes of this determination, the period for which we are measuring subsidies (the review period) is calendar year 1985. Based upon our analysis of the petition, the responses to our questionnaire, our verification, and comments submitted by petitioner we determine the following:

I. Programs Determined To Confer a Subsidy

We determine that subsidies are being provided to producers or exporters in Chile of standard carnations under the following programs:

A. Stamp and Seal Tax Exemption for Exporters (SST)

The SST is a tax that affects all credit operations in Chile. Bills of exchange, promissory notes, letters of credit and any other document containing a loan or any other money credit transaction are subject to the SST. This tax amounts to 0.2 percent of the par value of the document per month, for a maximum limit of twelve months or 2.4 percent. As of October 29, 1985, the Government of Chile began exempting export credit operations from the SST. Neither the Government of Chile nor the respondent companies gave us clear explanations as to what is meant by "export credit operations." Nor did we find any indication that the exporters paid the SST in any export credit operations. Therefore, based on best information available, we assume that companies which export are exempted from paying the stamp and seal tax on all export credit operations.

Because the exemption appears to be available only to companies which export, we determine that this exemption constitutes an export subsidy. To calculate the benefit during the review period, we used the best information available, since the companies did not give us specific information on each loan obtained in 1985; nor did they give us any information on loans for 1986. Therefore, for Agricola Longotoma, one of the two exporters, we first multiplied total principal outstanding as of December 31, 1985, by the ratio of export earnings to total earnings for 1985; we then multiplied the result by 0.4 percent, in order to determine the benefit conferred by the exemption granted for the last two months of 1985. For the second exporter, Coexflor (which exports 100 percent of its sales), we multiplied the outstanding balance of its 120-day credit line as of December 31, 1985, by 0.4 percent as well. Because this program started only during the last two months of the review period and, therefore, could only benefit export sales made after the start of the program, we allocated the total subsidy received by both companies in 1985 over the proportion of total exports during the review period to which this subsidy is attributable. This resulted in an estimated net subsidy of 2.25 percent *ad valorem*.

B. Export Rebate (Simplified Drawback)

Law 14,480 of December 1985 allows a 10 percent simplified drawback on the F.O.B. value of exports to those companies whose exports averaged US$2.5 million or less in 1983 and 1984 and whose annual exports have not exceeded US$7.5 million after 1984.

According to the Government of Chile's response, this drawback is a rebate of import duties and other indirect taxes on inputs physically incorporated in an exported product. However, the Government of Chile has provided no evidence that eligibility for the rebate is linked to import duties or indirect taxes paid on such inputs, as required in our determination in *Certain Apparel from Thailand: Final Affirmative Countervailing Duty Determination and Countervailing Order* (50 FR 9818, March 12, 1985). Lacking any evidence that the Government of Chile attempted to base the export rebate on an accurate model of indirect taxes and import duties on physically incorporated inputs, as best information available, we determine that this rebate is countervailable in its entirety.

We verified that this law went into effect in 1986 and that the companies under investigation did not receive any benefits under this program during the review period. However, to the best of our knowledge, the companies did receive benefits in 1986. Therefore, we are adjusting the duty deposit rate to reflect the 10 percent *ad valorem* subsidy granted under this program.

II. Programs Determined Not To Confer a Subsidy

We determine that subsidies are not provided to producers or exporters in Chile of standard carnations under the following program:

Value Added Tax (VAT) Rebate

Under the VAT system in Chile, a duty or sales tax of 20 percent is paid at each stage of production. Each time a transaction takes place, the purchaser pays, and the seller collects, the tax on behalf of the government. However, no VAT Is collected when an export sale is made. Once a month companies must total their payments and collections of VAT and settle their account with the Chilean tax authorities.

Producers for the domestic market usually owe the government because they collect more tax on the sales of their products than they have paid on inputs. Exporters, on the other hand, will always be in a credit situation vis-a-vis the government with respect to their export sales. In order to neutralize this disadvantage, the government provides that exporters may receive a rebate of a percentage of the total VAT paid by the exporter. This percentage is based on the amount export sales represent of total sales. At the end of each month, exporters, like all other companies, must reconcile payments and collections with the government and refund to the government the collections that exceed payments.

We found no evidence that this rebate constitutes an excessive remission of indirect taxes and, heance, it does not constitute a subsidy.

III. Programs Determined Not To Be Used

We determine that producers or exporters in Chile of standard carnations did not use the following programs:

A. Preferential Export Credit

Petitioner alleges that exporters of standard carnations in Chile may benefit from export credits provided at preferential rates by the Government of Chile.

According to the Government of Chile, the lines of pre- and post-shipment credit available to exporters are regulated by Chapter X of the Compendium of Export Rules of the Central Bank of Chile and the rates of interest applicable to these lines of credit are market rates.

We found no evidence at verification that any of the companies under investigation received loans on terms inconsistent with commercial considerations. Therefore, we determine that the companies under investigation did not benefit from preferential export credit.

B. Corporacion de Fomento (CORFO) Loans and Debt Rescheduling

Petitioner alleges that producers and exporters of standard carnations in Chile may benefit from subsidized loans and subsidized debt rescheduling provided by the Chilean Development Bank (CORFO) to agriculture. We verified that the companies under investigation did not have loans received under this program outstanding during the review period.

C. Preferential Exchange Rate for Repayment of Foreign Debt

Petitioner alleges that producers and exporters of standard carnations in Chile may benefit from a preferential exchange rate available for repayment of foreign debt incurred before August 6, 1982.

We verified that a preferential foreign exchange rate was established during August 1982 in view of the deregulation of the national currency which adversely affected those with foreign currency debts. To be eligible for the preferential exchange rate, the debt had to be incurred prior to 1982. We verified that the companies under investigation did not benefit from this program.

D. Deferred Import Duties for Capital Goods

Petitioner alleges that producers and exporters of standard carnations in Chile may benefit from a deferral or exemption of import duties on capital goods used in the agricultural industry.

According to the Government of Chile, machinery for agriculture is excluded from the benefits of Decree Law 1,226 providing for the deferred payment of import duties. We verified that the companies under investigation have not received benefits from this program.

E. Tax Rebate on Fixed Assets

As of October 29, 1985, the Government of Chile provides a VAT rebate on fixed assets six months after the assets have been purchased. We verified that the companies under investigation have not received rebates under this program.

F. Currency Retention Scheme

The Government of Chile requires almost all exporters to repatriate foreign exchange earnings from exports within 90 days of shipment. Under certain circumstances, the exporter is allowed a waiver of the 90-day rule. We verified that all exporters under investigation repatriated their foreign exchange within the 90-day period.

G. Export Credit Limits

Under Law No. 18439, the Government of Chile has increased the level of authorized bank lending for exports beyond that which is available to producers which sell domestically. At verification, we found no indication that the exporters under investigation received more loans than domestic sellers.

Petitioner's Comments

Comment 1: Petitioner argues that Agricola Longotoma, Ltd., benefitted from a preferential exchange rate on repayment of a loan taken out on December 31, 1985. Petitioner contends that this loan was a loan under Agreement 1466, which was one of the vehicles used to implement the program providing a preferential rate for the repayment of foreign debt.

DOC Position: Under this program, a preferential exchange rate is available only for loans taken out prior to August 1982. Therefore, the loan petitioner refers to is not eligible for the preferential exchange rate.

Comment 2: Petitioner argues that the loans of Agricola Longotoma, Ltd., and Alberto Behn were rescheduled at preferential rates. Petitioner argues that, to the extent information on rescheduling was not obtained at verification, the agency should reject the questionnaire responses of the Chilean producers and use best information otherwise available for purposes of the final determination.

DOC Position: We found no evidence at verification that any of the companies under investigation received loans from government sources, nor did we find any evidence that commercial loans were rescheduled on terms inconsistent with commercial considerations.

Comment 3: Petitioner argues that the provision in the VAT rebate program which allows exporters to recover VAT prior to actually exporting their goods provides a benefit to the recipients (equal to the time value of money). Petitioner argues that the benefit should be calculated according to the following paragraph of Article 1 of Decree 34,011 of the General Controllership of the Republic:

> If the exporter does not effect the respective export operation, he should restitute the values returned within the month following the one in which he realizes the export would not take place, the values should be adjusted in the same percentage the Consumer Price Index variation was established for the month prior to the reception of the values and the month prior to actual restitution. The adjusted value will be charged one percent monthly interest.

DOC Position: We disagree. During verification, we noted that, in the normal course of trade, it is usually the producer selling his goods domestically who actually recoups his "Purchases VAT" (the VAT he pays when purchasing an item) earlier than the exporter. As explained *supra*, the domestic seller starts recovering his "purchases VAT" the minute he sells his products through the acquisition of "sales VAT" (the VAT he collects when making a domestic sale). In fact, we found in many cases that domestic sellers receive more "sales VAT" per month than "purchases VAT", thus giving them extra funds which they do not have to return to the government until the end of the month when they reconcile their VAT payments and collections with the Chilean government. The exporter, on the other hand, receives no "sales VAT" for his foreign sales; therefore, if he had to wait until after his goods were exported to file for VAT rebates, he would always be at a disadvantage vis-a-vis a seller in the domestic market. The provision allowing exporters to recover "purchases VAT" prior to actually exporting their products merely entitles the exporter to treatment similar to the domestic seller. Therefore, we do not consider that this program provides a countervailable subsidy.

Comment 4: Petitioner contends that, from the face of the questionnaire responses, it is clear that in 1986 companies will receive benefits under the Simplified Drawback program. Petitioner argues that, since efforts to

verify this program were met with much resistance, the ITA should issue an affirmative final determination finding this program countervailable with a net benefit of 10 percent *ad valorem*. This would be consistent with the mandates of the law and with prior agency practice regarding program-wide changes.

DOC Position: We agree that a new subsidy program went into effect after the review period. This program went into effect prior to our preliminary determination and, to the best of our knowledge, some of the respondents did receive benefits in 1986 under this program. This program thus benefits the merchandise that is subject to suspension of liquidation. Therefore, we are issuing an affirmative final determination with a duty deposit rate which reflects the best information available on the subsidy provided under this new program.

Comment 5: Petitioner argues that the verification report on one company indicates that its credit operations were not subject to the stamp and seal tax charge. Therefore, the ITA must find that a benefit has been received.

DOC Position: We agree. Based on best information available, we have determined that benefits have been received by exporters under this program. See Section I.A. of this notice.

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 tracing the information in the responses to source documents, accounting ledgers, financial statements and annual reports.

Suspension of Liquidation

In accordance with section 705(c)(B) of the Act, we have instructed the U.S. Customs Service to suspend liquidation of all entries of standard carnations from Chile which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this determination in the **Federal Register** and to require a cash deposit or bond for each such entry in the amount of 12.25 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary 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 75 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 does exist, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on standard carnations from Chile 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.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 167d(d)).

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

January 27, 1987.

[FR Doc. 87-2129 Filed 2-2-87; 8:45 am]

BILLING CODE 3510-05-M

[C-508-603]

Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers From Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in Israel of certain fresh cut flowers (cut flowers) as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 11.59 percent *ad valorem* during the review period. However, consistent with our stated policy of taking into account a program-wide change which occurred after our review period, but prior to the preliminary determination, we are adjusting the duty deposit rate to reflect changes in the Export Promotion Financing Fund program.

We have notified the U.S. International Trade Commission (the ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of cut flowers from Israel that are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on entries of this merchandise in an amount equal to 10.79 percent *ad valorem*.

EFFECTIVE DATE: February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Martin, Barbara Tillman, or Ross Cotjanle, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2830, (202) 377-2433, or (202) 377-3534.

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 producers or exporters in Israel of cut flowers. For purposes of this investigation, the following programs are found to confer subsidies:

- Exchange Rate Risk Insurance Scheme.
- Export Promotion Financing Fund.
- Long-Term Development Loans to Agrexco.
- Government Support of the Flower Board.
- Fuel Grants and Low-Cost Credit.

We determine the estimated net subsidy to be 11.59 percent *ad valorem* for all producers or exporters in Israel of cut flowers during the review period. However, we are adjusting the duty deposit rate to reflect a program-wide change in the Export Promotion Financing Fund program that occurred after our review period but prior to our preliminary determination. Thus, the cash deposit or bond on entries of these products will be 10.79 percent *ad valorem*.

Case History

On May 21, 1986, we received a petition in proper form from the Floral Trade Council filed on behalf of the U.S. industry producing cut flowers. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that producers or exporters in Israel of cut flowers receive, directly or indirectly,

benefits which constitute subsidies within the meaning of section 701 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on June 10, 1986, we initiated an investigation (51 FR 21956, June 17, 1986). We stated that we expected to issue a preliminary determination on or before August 14, 1986.

On June 25, 1986, the petitioner requested a full extension of the period within which a preliminary countervailing duty determination must be made pursuant to section 703(c)(1)(A) of the Act. On July 3, 1986, we issued a notice of postponement stating that the preliminary determination would be made on or before October 20, 1986 (51 FR 25084, July 10, 1986).

Since Israel is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry. On July 7, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Israel of the subject merchandise (51 FR 25751, July 16, 1986).

On June 20, 1986, we presented a questionnaire to the Government of Israel in Washington, DC, concerning petitioner's allegations. We received responses from the government and from Agricultural Export Co., Ltd. (Agrexco), and R. Shemi, Ltd. (Shemi), on August 13, 1986. Agrexco and Shemi are exporters of the subject merchandise, and they accounted for at least 60 percent of the United States exports of cut flowers during the review period. Since there are over 1,000 growers of cut flowers in Israel, the government provided information on an aggregate basis for all growers. Additional information was supplied on August 26, September 3, 16, 22, 25 and 26, and October 9, 17, and 31, 1986. Corrections to the responses were filed on November 25, 1986.

On the basis of the information contained in these responses, we made our preliminary determination on October 20, 1986 (51 FR 37925, October 27, 1986). Based upon the request of the petitioner, on November 26, 1986, we extended the deadline dates for the final determinations in the countervailing duty investigations of certain fresh cut flowers from Canada, Israel, Kenya, the Netherlands, and Peru, and standard carnations from Chile to correspond to the date of the final determinations in the antidumping duty investigations of the same merchandise, pursuant to section 705(a)(1) of the Act, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98–573) (51 FR 43649, December 3, 1986). On January 9, 1987, we extended the deadline date for the countervailing duty determinations on standard carnations from Chile and certain fresh cut flowers from Israel and the Netherlands to coincide with the postponement of the final antidumping duty determination on standard carnations from Chile, in accordance with section 705(a)(1) as amended, 19 U.S.C. 1671d(a)(1) (52 FR 1515, January 14, 1987).

From November 6 to November 18, 1986, we verified the information submitted by the Government of Israel, Agrexco, and Shemi.

At the request of the petitioner, we held a public hearing on December 5, 1986, to afford interested parties an opportunity to present views orally in accordance with our regulations (19 CFR 355.35). Petitioner and respondents filed case briefs on December 18, 1986, post-hearing briefs on December 22, 1986, and comments on the verification reports on January 14, 1987.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS) and gerbera, currently provided for in item 192.21 of the TSUS.

Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general 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* (49 FR 18006, April 26, 1984).

For purposes of this determination, the period for which we are measuring subsidies (the review period) is October 1, 1985 through September 30, 1986, which corresponds to the companies' fiscal year.

Based upon our analysis of the petition, the responses to our questionnaire, verification and comments submitted by the interested parties, we determine the following:

I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to producers or exporters in Israel of cut flowers under the following programs:

A. Exchange Rate Risk Insurance Scheme

The Exchange Rate Risk Insurance Scheme (EIS), operated by the Israel Foreign Trade Risk Insurance Corporation Ltd. (IFTRIC), is aimed at insuring exporters against losses which result when the rate of inflation exceeds the rate of devaluation and the new Israeli snekel (NIS) value of an exporter's foreign currency receivables does not rise enough to cover increases in local costs.

The EIS scheme is optional and open to any exporter willing to pay a premium to IFTRIC. Compensation is based on a comparison of the change in the rate of devaluation of the NIS against a basket of foreign currencies with the change in the consumer price index. If the rate of inflation is greater than the rate of devaluation, the exporter is compensated by an amount equal to the difference between these two rates multiplied by the value-added of the exports. If the rate of devaluation is higher than the change in the domestic price index, however, the exporter must compensate IFTRIC. The premium is calculated on the basis of the value-added of the exports.

In determining whether an export insurance program provides a countervailable benefit, we examine whether the premiums and other charges are adequate to cover the program's long-term operating costs and losses. In *Potassium Chloride from Israel: Final Affirmative Countervailing Duty Determination* (49 FR 36122, September 14, 1982), we stated that we had insufficient data to determine that the premiums and other charges were manifestly inadequate to cover the program's long-term operating costs and losses. We noted, however, that we were not making a conclusive determination on the program's countervailability at that time. However, in the *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Israel* (52 FR 1649, January 15, 1987), we found that this program conferred a countervailable benefit on manufacturers, producers, or exporters in Israel of oil country tubular goods.

In this case, we reviewed EIS data which show that EIS operated at a loss from 1981 through 1986. In fact, in the five years of operations, there was only one month where premiums received were greater than compensation paid out. We believe that five years is, in this case, a sufficiently long period to establish that the premiums and other charges are manifestly inadequate to

cover the long-term operating costs and losses of the program. We, therefore, determine that this program confers an export subsidy on exports of cut flowers from Israel.

We calculated the benefit from this program by allocating the amount of compensation Agrexco and Shemi received from IFTRIC, after deducting premiums paid, over the companies' relevent exports during the review period. The calculation was based upon all non-European exports for Shemi and all flower exports to all markets for Agrexco for the period October 1985 to September 1986. We used these exports for the basis of the calculation because that is how the accounting records on this program are maintained in the companies. This resulted in an estimated net subsidy of 8.87 percent *ad valorem.*

B. Export Promotion Financing Fund

The Foreign Trade Center of the Ministry of Agriculture operates the Export Promotion Financing Fund to promote the development of export markets for fresh Israeli produce.

Exporters submit a request for participation in promotional activities, and the Ministry determines on the basis of the development potential and in view of the availability of funds whether to approve the request. Approved proposals receive reimbursements of up to 50 percent of actual expenses. The Israeli government requires exporters to provide receipts before granting reimbursements.

On July 10, 1986, the Export Promotion Committee of the Ministry of Agriculture determined at its annual meeting that effective October 1, 1986, no export promotion funds would be provided for promotion of cut flowers in the United States market.

We verified that during the review period Shemi received funds for general advertising of all products in all markets, and Agrexco received funds for promotion of all flowers in the United States and Canada. We also verified that Shemi used a portion of these funds for the promotion of carnation plants and cuttings, rather than for flowers.

Because assistance under this program provides cash payments and is available only to exporters, we determine it is countervailable. To estimate the benefits Shemi received on exports to the United States, we multiplied the value of the funds Shemi received for export promotion for flowers for all markets during the review period by the ratio of Shemi's U.S. exports to its total exports. We calculated the *ad valorem* benefits from this program by dividing the compensation Shemi and Agrexco received on their exports to the United States by the value of their U.S. exports during the review period. This resulted in an estimated net subsidy of 0.80 percent *ad valorem.*

The Export Promotion Financing Fund is overseen by the Israeli government's Export Promotion Committee. This committee meets once a year to review the past administration of the fund and to set policy for the future. During its most recent annual meeting on July 10, 1986, the committee voted to eliminate as of October 1, 1986, any benefits under the fund for the export of flowers to the United States. When the government in question institutes a program-wide change prior to our preliminary determination and when that change results in complete cessation prior to our preliminary determination of benefits under the program, it is our policy to take that change into account by not including the estimated net subsidy from this program for duty deposit purposes. We are satisfied here that the Export Promotion Committee's action constitutes such a program-wide change. We have accordingly not included the estimated net subsidy from the Export Promotion Fund in the duty deposit rate.

C. Long-Term Development Loans to Agrexco

Agrexco received four long-term development loans which had balances outstanding during the review period. Fixed-rate loans were received in 1971 and 1973, and two variable rate loans linked to the Consumer Price Index (CPI) were received in 1980.

These loans were not provided under the Encouragement of Capital Investments in Agriculture Law (ECILA), or under the development budget of the Ministry of Agriculture. (*See* section II.D. of this notice, which discusses development loans for agriculture.) The Government of Israel did not provide us with information concerning selection criteria for these loans, nor did it provide us with information on the distribution of loans under this program. Because we have no information on the approval process or actual distribution of these loans, we have determined that the loans are limited to a specific enterprise or industry, or group of enterprises or industries.

To determine if these loans are provided on terms inconsistent with commercial considerations, we compared them to a commercial benchmark interest rate. Because there is no fixed-rate long-term borrowing in Israel, we have used as our benchmark the short-term NIS interest rate prevailing in the review period. Based on this comparison, we find that the loans were provided on terms inconsistent with commercial considerations. Therefore, we determine these development loans to be countervailable.

To calculate the benefit from these loans, we applied our short-term loan methodology. Dividing the amount of interest savings in the review period by the value of total sales of Agrexco and Shemi during the review period, we calculated an estimated net subsidy of 0.04 percent *ad valorem.*

D. Government Support of the Flower Board

Petitioner alleges that the Government of Israel may provide funds directly to the Ornamental Plants Production and Marketing Board (Flower Board) or may reduce the Flower Board's expenses by providing staff. The Flower Board is a statutory body established by the Ornamental Plants Production and Marketing Board Law of 1976. The Flower Board is appointed by the Israeli Cabinet acting through the Ministers of Agriculture and Commerce and Industry. However, the Government provides no staff to the Board.

In its responses, the Government of Israel stated that no government support had been provided to the Flower Board. At verification, however, we found that the Flower Board had received funds from the Ministry of Agriculture in the year prior to the review period. The Government of Israel attempted to establish that funds provided by the Ministry of Agriculture to the Flower Board were not intended to support the general activities of the Board, but rather were provided for a research project on ocean transport of flowers. The government claimed that the results of the study were public.

Based on the information provided, we were unable to verify that the Ministry of Agriculture specifically required that the funds be used for this research project. Furthermore, a similar sum of money had been provided by the Ministry of Agriculture in the previous year, also for unspecified purposes. Because respondents did not provide us with the budget of the Flower Board for the review period, we determine on the basis of the best information available that the Government of Israel provided financial support to the Flower Board in the review period and that this financial support is countervailable.

To calculate the benefit from this assistance, we divided the amount of financial support provided to the Flower Board during the year prior to the review period by the value of flower

exports during the review period. The estimated net subsidy is 0.07 percent *ad valorem*.

E. Fuel Grants and Low-Cost Credit

In 1982, the Israeli Institute for Farm Research published a survey on the profitability of rose production in the 1980/81 season. This study states that gross income for rose growers included grants for fuel expenses and interest savings on low-cost credit. Petitioner requested that we investigate such benefits.

We verified that Agrexco and Shemi did not receive fuel grants or so-called "low-cost credit" during the review period, but we were unable to verify that growers of cut flowers did not receive these benefits. Although the Government of Israel maintained that the program had been discontinued, they failed to provide evidence of termination of the program or non-receipt of benefits by the growers.

In the Department's recent administrative review under section 751 of the Act, *Fresh Cut Roses from Israel; Final Results of Countervailing Duty Administrative Review and Determination Not to Revoke Countervailing Duty Order* (51 FR 44498, December 19, 1986), we determined the benefit from this program to be 1.81 percent *ad valorem*. On the basis of this determination as the best information available, we determine that the estimated net subsidy for cut flowers is 1.81 percent *ad valorem*.

II. Programs Determined Not to Confer Subsidies

We determine that subsidies are not being provided to producers or exporters in Israel of cut flowers under the following programs:

A. Export Financing Program

Petitioner alleges that the Government of Israel provides preferential export financing to producers or exporters in Israel of cut flowers through three export credit funds administered by the Bank of Israel. The Export Production Fund provides foreign currency loans to exporters to enable them to finance export production. The Export Shipments Fund provides loans to exporters to enable them to extend credit in foreign currency to their overseas customers. Under the Imports-for-Exports Fund, exporters receive loans in foreign currency in order to finance imported materials used for export production. The export financing program was referred to in our notice of initiation as the "Export Credit Fund."

Since July 1985, the Bank of Israel has authorized commercial banks to lend specified levels of foreign currency to exporters. The interest rate charged by the commercial banks for these foreign currency loans is the London Interbank Offered Rate (LIBOR) plus two percent.

During the review period, Agrexco and Shemi received dollar loans under the export financing program. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided as preferential rates.

Dollar loans are not otherwise available in Israel, and we were not able to obtain benchmark interest rates for these loans from independent sources. In *Potassium Chloride from Israel: Final Affirmative Countervailing Duty Determination* (49 FR 36122, September 14, 1982), we found that the appropriate benchmark for short-term foreign currency loans was LIBOR plus two percent. Based on information received at verification concerning offers for short-term foreign currency loans, we consider that this is still the appropriate benchmark.

Comparing the benchmark interest rate to the rates charged on these loans, we determine that none of the loans were provided at preferential rates, and, thus are not countervailable.

B. Grants Under the ECILA

The ECILA came into effect in April 1981, to encourage capital investments in agriculture. To accomplish this, the ECILA provides investment and drawback grants for approved agricultural enterprises. Investment grants are provided for a portion of the investment. Drawback grants relate to taxes on investment. ECILA grants were also referred to as "Cash Payments to Growers for Greenhouses" and "Cash Payments to Packing Houses" in our notice of initiation.

Persons requesting ECILA grants apply to a regional office of the Ministry of Agriculture. The regional office forwards the application together with its recommendation to the national office of the Ministry, which in turn makes its recommendation to the Agricultural Investment Authority. This Authority decides whether to approve the request. If approved, the grant is paid upon completion of the project or upon specified stages of completion. Since the beginning of this program in 1981, producers and exporters of cut flowers have received both investment and drawback grants.

We verified that grants have been received by agricultural enterprises of all types throughout Israel, and, that the grants are not contingent upon export performance or limited to companies in specific regions of the country. Therefore, we determine that the program is not countervailable.

C. Preferential Accelerated Depreciation and Other Tax Benefits Under ECILA

The ECILA provides tax benefits for approved enterprises. The text of the ECILA indicates that producers that receive "approved undertaking" status are automatically eligible for ECILA tax benefits. We verified that ECILA grants to "approved undertakings" were provided throughout the entire agricultural sector. Therefore, we determine that these tax benefits are not limited to a specific enterprise or industry, or group of enterprises or industries. In addition, we verified that Agrexco, which was not eligible for ECILA benefits, received no benefits from preferential tax provisions since its tax liabilities were not affected by the application of these provisions.

D. Development Loans for Agriculture

Development loans were the primary source of institutional long-term credit in the agriculture sector until they were abolished in 1985. This program is also referred to in the notice of initiation as "Long-Term Loans to Packing Houses/Exporters." Development loans in the agricultural sector were provided as part of the development budget of the Ministry of Agriculture. Shemi had development loans approved by the Ministry of Agriculture on which principal was outstanding during the review period.

We verified that the agricultural development loans were given on the same terms to virtually all agricultural producers, irrespective of region or development zone and irrespective of export performance. Accordingly, we determine that the program is not countervailable.

E. General Research and Development Programs

Petitioner believes that exporters of cut flowers are benefitting from research and development programs funded by the Government of Israel.

We verified that the Government of Israel sponsors and carries out a great deal of agricultural research in all fields by grants to universities and research institutions. Results of basic and general research are widely published in Israel and abroad.

Since the results of these research and development activities are made available for public use, we determine that these programs are not countervailable.

F. Government Funding of Agrexco and Purchase of Agrexco Shares

Petitioner alleges that the Government of Israel provided funds, in the form of cash grants or purchases of equity, to Agrexco.

We verified the government's funding of Agrexco consisted of government purchases of shares in the company. Agrexco is a non-profit company which acts as the seller, marketer, and distributor of all types of Israeli agricultural products. Most of Agrexco's stock is owned by agricultural producers and not the government. Since Agrexco operates as a cooperative, it does not retain profits, but always covers its costs and obligations. Although Agrexco is a non-profit company, it is classified as a private company under Israeli law. We have consistently held that government provision of equity does not *per se* confer a countervailable benefit. Government equity infusions bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations.

There is no evidence in the record indicating that the purchase of Agrexco's shares was inconsistent with commercial considerations. We verified that the government's investment was justified by the value of Agrexco's real assets, its logistics and sales organization, its reputation and the goodwill of its customers, and by its "Carmel" brandname. Due to these attributes, the government could realize a reasonable rate of return on its investment in Agrexco by sale of its equity to other parties, despite the fact that it is a not-for-profit company. We note that the Government of Israel has in the past sold its equity in commercial companies, including other not-for-profit companies. Therefore, we determine that the government's purchase of equity in Agrexco does not confer a countervailable benefit.

III. Programs Determined Not To Be Used

Based on the verification of the responses of the Government of Israel, Agrexco, and Shemi, we determine that the producers or exporters in Israel of cut flowers did not use the following programs, which were listed in our notice of initiation:

A. Interest Subsidy Payments

Petitioner alleges that beginning on July 1, 1985, exporters in Israel of cut flowers may receive under the Encouragement of Capital Investments Law (ECIL), grants from the Government of Israel for the rebate of interest on loans provided by commercial banks. We verified that Agrexco and Shemi did not receive any benefits under this program, and that agricultural enterprises including the flower industry are not eligible to receive benefits under the ECIL program.

B. Government-Guaranteed Minimum Price Program

The Ministry of Agriculture operates a program to guarantee a minimum income to farmers on their crops in case of bad marketing conditions. The government determines a national level of production to be covered by the guarantee program, sets a minimum price based on expected market conditions, and pays half of the difference between the guaranteed price and the actual average market price, if the market price is lower than the guaranteed price.

We verified that no claims or payments were made under this program for carnations or gerbers during the review period.

C. Capital Fund for Agrexco

Agrexco's 1979/80 financial statement shows that a capital fund for Agrexco was created from Ministry of Agriculture investment grants.

We verified that Agrexco's capital fund was created in 1968, and that it has not received any investment grants since then. We allocate grants over the average useful life of renewable physical assets in the industry involved, as determined by the U.S. Internal Revenue Service in the 1977 Class Life Asset Depreciation Range System. According to our grant methodology, grants bestowed in 1968 only bestow benefits for ten years in the flower industry. As a result, benefits are no longer accruing from these grants.

D. Rebate of Export Insurance Premiums

Petitioner alleges that exporters of cut flowers receive rebates of export insurance premiums from the Government of Israel. We verified that Agrexco and Shemi did not hold export insurance, other than Exchange Rate Risk Insurance, during the review period.

E. Encouragement of Industry (Taxes) Law (EIL)

Petitioner alleges that producers or exporters in Israel of cut flowers may receive benefits under the following sections of the EIL: Preferential accelerated depreciation, reduction in income tax rates, and tax deductible inventory adjustment. We verified that Agrexco and Shemi did not claim any of these benefits during the review period and that growers are not eligible for EIL benefits.

F. Other Benefits Referenced in the ECIL

The Foreword to the Encouragement of Capital Investments Law (ECIL) makes reference to benefits in the form of labor training supported by the Ministry of Labor. We verified that Shemi and Agrexco did not receive any benefits from the Ministry of Labor, and that cut flower growers are not eligible for benefits by virtue of the fact that agricultural producers receive benefits only under ECILA.

G. Specific Research and Development Funding

Research undertaken on behalf of the Government of Israel under contract with outside parties is disseminated according to the terms of the contract. We verified that Agrexco and Shemi did not receive any grants for research and development or participate in any government-sponsored research and development programs. In addition, we found no evidence indicating that specific research and development funding was provided for the products under investigation.

IV. Program Determined To Be Terminated Property Tax Exemption on Equipment

Petitioner alleges that producers or exporters in Israel of cut flowers may claim tax benefits under the ECIL that allow eligible enterprises a 10-year exemption from payment of one-sixth of property taxes on equipment. We verified that property taxes were abolished for all taxpayers in Israel as of April 1, 1981. Accordingly, no property taxes were assessed against any company in Israel from 1981 through 1984. A new special temporary property levy was introduced on April 1, 1985, and was enacted in August 1985 under the Property Levy Law. These taxes were applicable to all companies in Israel, and no company was exempt from the tax. Currently, no property taxes are in effect with respect to any company in Israel.

Petitioner's Comments

Comment I: Petitioner argues that the appropriate test for determining whether Agrexco and Shemi received preferential accelerated depreciation and other tax benefits under the ECILA is whether, absent use of these benefits, there would have been a tax liability.

DOC Position: We found the ECILA program to be available and provided to the entire agriculture sector and, therefore, not countervailable. In

addition, we verified that Shemi would have had no tax liability in the review period even if it had not used accelerated depreciation and other tax benefits. Finally, since Agrexco is not a producer of agricultural products, it is not eligible for any ECILA benefits.

Comment 2: Petitioner contends that even if all enterprises and individuals within the agricultural sector received identical benefits under the ECILA grant program, the program would still be countervailable given its limitation to the agricultural industry or group of industries. The program is clearly distinguishable from, for instance, government construction of highways intended to assist the entire population and not a particular industry or enterprise. *See e.g., Cabot Corp.* v. *United States,* 620 F. Supp. 722 (1985).

DOC Position: We disagree. To the extent that *Cabot* supports the proposition that generally available benefits may be countervailable, we disagree with the decision of the court. The Court vacated its remand order on mootness grounds by order dated November 20, 1986, Consol. Court No. 83-7-01044. Furthermore, the decisions of the Court of International Trade in *Carlisle Tire and Rubber Co. v. United States,* 6 CIT 229 (1983) and *Al Tech Specialty Steel Corp.* v. *United States,* 12, CIT , Slip Op. 86-124 (December 1, 1986) clearly support our position on specificity, which is that benefits provided to more than a specific enterprise or industry, or group of enterprises or industries, are not countervailable.

Comment 3: Petitioner contends that the export financing program is countervailable. Petitioner alleges that Agrexco and Shemi are uncreditworthy and would not have had access to foreign currency loans at a rate of LIBOR plus two percent on the commercial market. Furhermore, because Agrexco transfer to growers funds it receives under the export financing program, the Department must determine whether the growers were creditworthy. Finally, petitioner argues that, even if they are creditworthy, neither the Israeli growers, Agrexco, nor Shemi would be able to obtain loans at the rate of LIBOR plus two percent. The Department's reliance in the preliminary determination on the Government of Israel's representation that the benchmark for foreign currency loans should be LIBOR plus two percent is incorrect. While this is the commercial rate at which Israeli banks are able to raise funds are relend on a profitable basis, it does not represent the rate available to Agrexco, Shemi and the growers. The advantage bestowed by a subsidy is measured by the value of the benefit to the recipient, not the cost of the loan to the Israeli banks.

DOC Position: Petitioner's uncreditworthiness allegation is untimely as it was not made until December 8, 1986, after the verification was completed. Furthermore, in accordance with the Subsidies Appendix, when we calculate benefits from short-term loans we do not treat uncreditworthy companies differently from creditworthy companies.

We agree that the benchmark for short-term loans should be based upon the rate for comparable commercial loans, rather than the cost of the loans to the Israeli banks. We have determined that the rate of LIBOR plus two percent is available to Israeli companies borrowing foreign currency. (See our discussion in section II.A.) Since Agrexco is the borrower and obligated to repay the loans, what Agrexco does with the money is irrelevant and there is no need to look at the creditworthiness of the growers.

Comment 4: Petitioner maintains that the development loans, which were provided by the Ministry of Agriculture, are countervailable because the government has discretion in granting the loans. The different sectors of agriculture receiving loans represent a specific group of enterprises or industries and, hence, these benefits are countervailable.

DOC Position: We disagree. We verified that development loans provided by the Ministry of Agriculture were given to virtually all types of agricultural commodities at the same interest rate regardless of location. The Department has consistently held that benefits available and provided to the entire agricultural sector of a country are not countervailable (See, *e.g., Final Negative Countervailing Duty Determination, Fresh Asparagus from Mexico* (48 FR 21613, May 13, 1983)).

Comment 5: Petitioner contends that in determining whether benefits from research and development programs are generally available, the Department must look behind the apparent range of beneficiaries to determine who in fact is intended to benefit. The Court of International Trade has held that "it is immaterial whether the information is disseminated to all groups, but whether the research and development is targeted to assist a particular, rather than a general industry . . . If the research is targeted to the production of roses, it is a subsidy." *Agrexco* v. *United States,* 604 F. Supp. 1238, 1241-42 (CIT 1985).

DOC Position: In determining whether research and development programs are countervailable, we examine whether the results of such programs are publicly available. At verification, we found that research and development support was provided by the Ministry of Agriculture to universities and research institutions and that the results of this research were publicly available worldwide. Under these circumstances, we have found research and development not countervailable. The decision cited by the petitioner, *Agrexco* v. *United States,* 604 F. Supp. 1238 (CIT 1985), is not binding. On July 3, 1985, the United States moved the CIT to vacate that part of its opinion which remanded the case to the Department. Because the CIT has not yet ruled on this motion, the decision is not yet a final judgment.

Comment 5: Petitioner contends that based on the reasoning of the Subsidies Appendix and the decision in *Stainless Steel Plate from the United Kingdom: Final Results in Countervailing Duty Administrative Review* (51 FR 44656, December 11, 1986), the government's equity purchases in Agrexco are inconsistent with commercial considerations and should be allocated in accordance with the Department's grant methodology. Since Agrexco is a not-for-profit company, and its shares are not publicly traded, but are held only by the agricultural cooperatives and boards and by the government, the government's purchase of Agrexco's shares is inconsistent with commercial considerations. The Department must place itself in the position of a private investor assessing the prospects of the company at the time of the investment to determine whether the purchases were consistent with commercial considerations.

DOC Position: We disagree that the government's purchase of Agrexco's shares was inconsistent with commercial considerations. We verified that Agrexco operates a world-wide marketing system with an annual turnover of more than 200 million dollars, and that its trademark and goodwill have significant value. Therefore, we cannot conclude that the government's equity purchases were inconsistent with commercial considerations.

Comment 7: Petitioner maintains that the Department was unable to verify that flower growers did not benefit from the fuel grants and low-cost credit program. Petitioner contends that, as best information available, the Department should use the *ad valorem* benefit found in the recent section 751

review determination concerning fresh cut roses from Israel.

DOC Position: We agree. We verified that neither Agrexco nor Shemi benefitted from this program, but we were unable to verify that flower growers did not receive benefits from this program. During verification, the Israeli government contended that references to this program originated in a report by the Institute of Farm Income Research, entitled, "The Profitability of the Greenhouse Sector in 1980/81." The government provided a letter dated November 3, 1986, from the manager of the Institute, stating that the fuel grants program operated in 1980/81, but was discontinued after one year, and that it has not been reintroduced. The letter further stated that the manager did not believe cut flower growers had received fuel grants. The letter also maintained that the subsidized credit mentioned in the report represented the difference between the real value of credit and the cost of actual credit that was extended to rose growers by exporters, and that exporters received this credit under the Bank of Israel export financing program.

However, the Israeli government did not provide us with documentation concerning the termination of this program, and we have no information on the actual utilization of the program by flower growers during the program's operation. Therefore, we have concluded on the basis of best information available, that benefits were provided to growers of cut flowers under this program.

Comment 8: Petitioner contends that respondents did not support their claim that the Ministry of Agriculture did not contribute to the Flower Board's 1985/86 budget. The record is clear that the Ministry of Agriculture in two prior years made contributions to the Flower Board's budget, and there is no indication that the Ministry discontinued its contributions. In the absence of verification of non-receipt, the Department should presume, as best information available, that the Ministry of Agriculture provided the Board during the review period with the same sum it has provided in each previous year.

DOC Position: We agree. See section I.D. of this notice.

Comment 9: Petitioner contends that, even if benefits under the export promotion financing fund are no longer provided on flower exports to the United States, the duty deposit rate for this program should not be zero. Petitioner believes that the budget of the fund has not been reduced out, rather, funds under the program have simply been allocated away from the United States to other countries. Given the fungibility of money, freeing funds in the exporter's third country promotion budget for use in promoting exports to the United States can result in the same benefits as previously were conferred by directly funding export promotion to the United States.

DOC Position: We disagree. We have no evidence indicating that the Israeli government is increasing export promotion financing on cut flowers to other countries. Moreover, even if benefits for shipments to the third countries were increased, there would be no benefit on exports of cut flowers to the United States, since funds under this program are granted to reimburse specific expenses. Although market-specific or product-specific benefits may have the effect of reducing a company's total expenses, the Department's policy is to allocate such benefits entirely to the market or product which they were intended to benefit.

Comment 10: Petitioner objects to the Department's decision to permit the respondents to limit their response to data covering the 1986 fiscal year, rather than also providing information covering the 1985 fiscal year.

DOC Position: We withdrew our request for 1985 fiscal year data on September 17, 1986, because the 1986 fiscal year (October 1 through September 30) represents the most recent period for which data are available. The 1986 fiscal year is subsequent to Israel's signing of the Free Trade Agreement with the United States and becoming a signatory of the Subsidies Code, which changed its export financing program. Furthermore, since the growing season ended in May, all exports of cut flowers had ended for fiscal year 1985. In addition, verification was conducted in November, after the completion of the 1986 fiscal year. Therefore, it was unnecessary for the respondents to supply data for the 1985 fiscal year.

Respondents' Comments

Comment 1: Respondents argue that ECILA grants are not countervailable because these grants are awarded to producers in all sectors of agriculture without regard to location, and the grants are not tied to export performance.

DOC Position: We agree. We verified that the ECILA grants are available and provided to the entire agricultural sector in Israel, and the grants were not contingent upon export performance.

Comment 2: Respondents maintain that the development loans for agriculture are not countervailable, because they were granted to producers in all sectors of agriculture, and there was no preference for specific products or regions of the country.

DOC Position: We agree that the agricultural development loans are not countervailable. We verified that they were available to, and provided on, equal terms to the entire agricultural sector.

Comment 3: Respondents contend that ECILA tax benefits should be considered generally available for the same reasons that the ECILA grants should not be found countervailable. In addition, both Agrexco and Shemi demonstrated that they would not have paid taxes during the review period even absent the application of the ECILA tax benefits. Therefore, Agrexco and Shemi did not benefit from this program.

DOC Position: We agree. We verified that ECILA tax benefits are available to the entire agricultural sector in Israel and that Agrexco and Shemi did not benefit from ECILA tax benefits during the review period. See section II.C. of the notice.

Comment 4: Respondents contend that the Exchange Rate Risk Insurance Program is structured and operated on sound commercial considerations and is not a countervailable subsidy. The program operates as a risk insurance program designed to balance over time. Because the program has been operating for only about five years, the Department cannot conclude that long-term costs will not be met my premiums. Moreover, this program merely attempts to restore exporters to approximately the same position they would have enjoyed had the domestic economy not eroded their profits during the period of time between the establishment of a contract price for exported goods and the receipt of payment. Therefore, this program does not provide exporters with a benefit.

DOC Position: We disagree. (*See Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Israel* (52 FR 1649, January 15, 1987)). The Government of Israel owns all of the shares of IFTRIC and acts as a re-insurer to cover IFTRIC's losses up to 150 million U.S. dollars. In general, to determine whether government-controlled export insurance programs confer countervailable benefits, the Department examines whether the insurance premiums and other payments charged are adequate to cover the program's long-term operating costs and losses. This approach is consistent with Paragraph (j) of the Annex to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the

General Agreement of Tariffs and Trade (the Subsidies Code), under which an export subsidy is defined to include:

> the provision by governments (or special institutions controlled by governments) . . . of insurance or guarantee programs against increases in the costs of exported products or of exchange risk programmes, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programmes.

EIS operated at a loss in each of the years 1981 through 1985. Despite continuing losses, which have amounted to millions of U.S. dollars each year, EIS has not raised the premium rates charged or increased other charges to its customers. We believe that five years is, in this case, a sufficiently long period to establish that the premiums and other charges are manifestly inadequate to cover the long-term operating costs and losses of the program. We therefore conclude that the premiums and other charges levied by EIS are minifestly inadequate to cover its long-term operating costs and losses.

Finally, we believe that the EIS program does provide a benefit to exporters. Exporters who do not participate in this program must absorb the losses that result when the rate of inflation in Israel exceeds the rate of devaluation of the shekel.

Comment 5: Respondents maintain that benefits accorded under the export promotion financing fund were overstated in their responses because of errors in reporting. The Department should use the corrected and verified amounts of benefits for the review period. In addition, as was verified, the program has been eliminated for promotion of flowers to the United States, so the duty deposit rate should be zero on this program.

DOC Position: We agree. Section 776(a) of the Act requires us to use verified information for our final determination. It is our stated policy to take into account a verified program-wide change, which occurs after the review period, but prior to the preliminary determination, if no benefits are still accruing under the program, by adjusting the duty deposit rate.

Comment 6: Respondents contend that government ownership of shares in Agrexco is not a subsidy because the ownership constitutes a commercially sound equity purchase rather than a grant. It was demonstrated at verification that Agrexco's shares have substantial commercial value. The Government of Israel does sell its shares in government companies, and if Agrexco's shares were sold the government would expect to realize a profit.

DOC Response: We agree. We verified that Agrexco operates a world-wide marketing system with annual turnover of more than 200 million dollars. Since Agrexco operates as a cooperative, it does not retain profits, but it always covers its costs and obligations. We also verified that Agrexco's trademark, "Carmel," contains significant value. We found no evidence indicating that the government's purchase of Agrexco's shares was not a commercially sound equity purchase. The Government of Israel is free to sell all or part of Agrexco's shares at any time.

Comment 7: Respondents contend that the position of Agrexco is distinguishable from that of British Steel in *Stainless Steel Plate from the United Kingdom; Final Results of Countervailing Duty Administrative Review* (51 FR 44666, December 11, 1986), which petitioner cites as providing the applicable standard to show that government ownership in Agrexco is a subsidy. In *British Steel* the government was the only shareholder, while in the case of Agrexco, the government is only one of several shareholders. The government has always paid the same price for Agrexco's shares as other investors have paid. The percentage of government ownership in Agrexco has decreased in recent years because Agrexco has issued additional shares to its other shareholders. Agrexco is a viable company, that operates as a cooperative and always covers its costs and obligations. By contrast, British Steel was "a dying concern bolstered by the government infusions of equity." Despite the fact that Agrexco does not pay dividends, ownership of Agrexco is a valuable asset.

DOC Position: We agree that the position of Agrexco is distinguishable from that of British Steel. There is no evidence in this case that the government's investment in Agrexco was inconsistent with commercial considerations.

Comment 8: Respondents contend that the export financing programs are not countervailable. All loans under these programs during the review period were made and repaid in foreign currency at the interest rate of LIBOR plus two percent. These programs do not represent government lending because commercial banks lend the foreign currency out of money they themselves raise. The government's role is to limit the volume of foreign currency lending because of currency controls and to set a maximum interest rate. Moreover, it is irrelevant that Agrexco distributes to growers money it borrows under this program, because Agrexco is liable for repayment.

DOC Position: We agree that these programs did not provide benefits to growers or exporters of cut flowers during the review period because the interest rate did not exceed the benchmark. However, we disagree that the program is not countervailable due to the fact that commercial banks lend the money out of funds they raise. Financing required by government action, even if the government is not the source of funds, can provide a subsidy. See, *e.g., Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Israel* (52 FR 1649, Jan. 15, 1987).

Verification

In accordance with section 776(a) of the Act, we verified the information and data used in making our final determination. During verification, we followed normal verification procedures, including meetings with government officials and inspection of documents, as well as on-site inspection of the accounting records of the responding companies.

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 entries of cut flowers from Israel which are entered, or withdrawn from warehouse, for consumption on or after October 27, 1986. As of the date of publication of this notice in the **Federal Register**, the Customs Service shall require a cash deposit or bond of 10.79 percent *ad valorem* for each entry of this merchandise from Israel.

ITC Notification

In accordance with section 705(d) of the Act, wel will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted, as a result of the suspension of liquidation,

will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing the Customs officers to assess countervailing duties on all entries of cut flowers from Israel, entered or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act (19 USC 1671d(d)).

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

January 27, 1987.

[FR Doc. 87-2128 Filed 2-2-87; 8:45 am]

BILLING CODE 3510-DS-M

National Telecommunications and Information Administration

Public Telecommunications Facilities Program; Closing Date for Applications

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Public Telecommunications Facilities Program: Notice of closing date for applications.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces that applications are available for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program of NTIA.

Applicants for grants under PTFP must file their applications on or before March 17, 1987. Congress has appropriated $20.5 million for this program in FY 1987, however, the President has recommended a recision of $19.3 million of that amount. If funds are available for the program for the fiscal year, NTIA anticipates making grant awards in early September 1987.

Although a Notice of Proposed Rulemaking for this grant program was published December 4, 1986 (51 FR 43804), the rules in effect for 1987 applications will be those currently found at 15 CFR Part 2301.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Acting Director, PTFP/NTIA/DOC, Room 4625, Washington, DC 20230. Telephone (202) 377-5802.

SUPPLEMENTARY INFORMATION:

I. Eligibility

To be eligible to apply for or receive a grant under the PTFP, an applicant must be:

(A) A public or noncommercial educational broadcast station;

(B) A noncommercial telecommunications entity;

(C) A system of public telecommunications entities;

(D) An nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes;

(E) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious to plan for the provision of public telecommunications services or;

(F) A State or local government or agency or a political or special purpose subdivision of a State.

II. Closing Date

Pursuant to 15 CFR 2301.10, the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. *The closing date selected for the submission of applications is March 17, 1987.*

III. Program Goals and Priorities

The Goals of this program, as stated in Section 390 of the Act are:

To assist through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

(1) Extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;

(2) Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and

(3) Strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

The Agency has established the following Priorities for the PTFP:

Priority I—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area

Within this category, we establish two subcategories:

A. Projects Which Include Local Origination Capacity

This category includes the planning or construction of new facilities which can provide a full range of radio and/or television programs including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

B. Projects Which Do Not Include Local Origination Capacity

This category includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks and repeater transmitters which will result in providing public telecommunications services to previously unserved areas.

Priority I and its subcategories only apply to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas which are presently unserved—i.e., areas which do not receive any public telecommunications services whatsoever. (It should be noted that television and radio are considered separately for the purposes of determining coverage.)

Under Priority 1B, NTIA will consider an area served when it receives a public television signal from a distant source through a cable system which has a penetration rate of 50 percent. (An applicant proposing to plan or construct a facility to serve a geographical area which is presently unserved, should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project.)

Priority II—Replacement of Basic Equipment of Existing Essential Broadcast Facilities

Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment in existing broadcast facilities which provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area.

In order to show that the replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (i.e., copies of maintenance logs. Letters documenting non-availability of parts should also be included.) Additionally, applicants must show that the facility is the only public telecommunications facility providing a signal to a geographical area or the only

facility with local origination capacity in a geographical area.

The distinction between Priority II and Priority IV is that Priority II is for the replacement of basic equipment for essential facilities. Where an applicant seeks to "improve" basic equipment in its facility (i.e., where the equipment is not "worn out"), or where the applicant is not an essential facility, NTIA would consider the applicant's project under Priority IV.

Priority III—Establishment of First Local Origination Capacity in a Geographical Area

Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters or cable systems.

Applicants seeking funds to bring the first local origination capacity to an area already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. (A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the originating facility.)

Priority IV—Replacement and Improvement of Basic Equipment for Existing Broadcast Facilities

Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards (e.g., conversions to color, stereo, etc.; improvements to signal quality and significant improvements in equipment flexibility or reliability). As under Priority II, applicants seeking to replace or improve basic equipment under Priority IV should show that the replacement of the equipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in maintenance logs).

Priority V—Augmentation of Existing Broadcast Station Facilities

Projects under this priority would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. Projects To Equip Auxiliary Studios at Remote Locations, or Either To Provide Mobile Origination Facilities

An applicant must demonstrate that significant expansion in public paticipation in programming will result. This category includes mobile units, neighborhood production studios or facilities in other locations within a station's service area which would make participation in local programming accessible to additional segments of the population.

B. Projects To Augment Production Capacity Beyond Basic Level in Order To Provide Programming or Related Materials for Other Than Local Distribution

This category would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

Other Cases. In any fiscal year, NTIA possesses the discretionary authority to award grants to eligible applicants whose proposals do not clearly fall within any of the listed priorities but whose application, by virtue of their unique or innovative nature, would further the overall objectives of the Act. Such projects include, among other things, the planning and construction of facilities to provide significantly different additional services for which a clear and substantial community need can be demonstrated (e.g., services to identifiable ethnic or linguistic minority audiences, services to the blind or deaf, instructional services or electronic text.)

IV. Application Forms and Regulations

To apply for a PTFP grant, an applicant must file a timely and complete application on a current form approved by the agency.[1] All persons and organizations on the PTFP's mailing list have been sent a copy of the current application form and the Interim Rules (15 CFR Part 2301). Those not on the mailing list may obtain copies by contacting the PTFP at the address above. Prospective applicants should read the Interim Rules carefully submitting applications. Applicants whose applications were deferred have been mailed pertinent PTFP materials and instructions for requesting reactivation.

Applicants should note that they must comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to serve a copy of their completed application on the appropriate Single Point(s) of Contact on or before March 17, 1987. Applicants are encouraged to contact the appropriate SPOC will before the NTIA closing date.

Applicants should note that all PTFP grant recipients are subject to the provisions of Office of Management and Budget (OMB) Circulars A–87 "Cost Principles for State and Local Governments," A–21 "Cost Principles for Educational Institutions," A–102, A–110, A–122, and A–128. In addition, any applicant organizations with outstanding accounts receivable with the Department of Commerce will not receive a new award until the debt is paid or arrangements to repay the debt which are satisfactory to the Department are made.

Potential PTFP grant recipients may also be required to submit a "Name Check" form (Form CD-346), which is used to ascertain background information on key individuals associated with the potential grantee. The "Name Check" requests information to reveal if any key individuals in the organization have been convicted or, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters pertinent to management honesty or financial integrity. Potential grantee organizations may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

V. Funding Criteria

The funding criteria for construction applications are as follows:

In determining whether to approve a construction grant application, in whole or in part, and the amount of such grant, or whether to defer action on such an application, the Agency will evaluate all the information in the application file and consider the following factors (the order of listing implies no priority):

(a) How well the applicant has satisfied the assurances required in 15 CFR 2301.5;

(b) The program purposes set forth in § 23012.20 of the Interim Rules as well as the specific program priorities set forth in Section III above;

(c) The adequacy and continuity of financial resources for long-term operational support, which assures the applicant's continual service to the communities within the service area;

[1] Approval has been requested from the Office of Management and Budget (OMB) for the information collection and reporting requirements contained in NTIA's application as required under the Paperwork Reduction Act of 1980.

and the availability of necessary funds for capital expenditures;

(d) The extent to which non-Federal funds will be used to meet the total cost of the project;

(e) The extent to which the applicant has: (1) Assessed specific educational, informational, and cultural needs of the community(ies) to be served by the proposed public telecommunications service;

(2) Evaluated alternate technologies, the basis upon which decisions were made as to the technology to be utilized and the extent to which the proposed service will not duplicate service already available;

(3) Provided meaningful documentation of applicant's equipment requirements;

(4) Provided meaningful documentation of community support for the service to be provided (such as letters from key elected/appointed policy-making officials, from agencies for whom the applicant produces or will produce programs or other materials);

(f) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities availabe to, operated by and owned (or controlled) by minorities and women;

(g) The extent to which various items of eligible apparatus proposed are necessary to, and capable of achieving the objectives of the project and will permit the most efficient use of the grant funds;

(h) The extent to which the eligible equipment requested meets current broadcast industry performance standards;

(i) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(j) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(k) The extent to which the project implements local, statewide or regional public telecommunications systems plans, if any;

(l) The extent to which the applicant's proposed five (5) year facilities plan required by section 392(a) of the Act is practical, financially affordable and consistent with the intent of the Act and Regulations;

(m) The readiness of the Commission to grant any necessary authorization;

(n) The urgency for funding based on justification of needs.

The funding criteria for planning applications are as follows:

In determining whether to approve a planning grant application, in whole or in part, and the amount of such grant, or whether to defer action on such an application, the Agency will evaluate all the information in the application file and consider the following factors (the order of listing implies no priority);

(a) How well the applicant has satisfied the assurances required in 15 CFR 2301.5 of the Interim Rules;'

(b) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(c) The qualifications of the proposed planner to provide a public telecommunications facilities plan;

(d) The extent to which the planning project's proposed procedural design assures that the applicant would obtain adequate;

(1) Financial, human and support resources necessary to conduct the plan,

(2) Coordination with other telecommunications entities at the local, state, regional and national levels,

(3) Evaluation of alternate technologies and existing services, and

(4) Participation by the public to be served (and by minorities and women in particular) in the planning of the project;

(e) The extent to which the applicant has engaged in pre-planning studies to determine the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary for the project);

(f) The extent to whch the proposed procedure and timetable are feasible and can achieve the expected results.

VI. Matching Requirements

(a) Planning Grants

A Federal grant for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the grant award document and the attachments thereto. The Agency may provide up to 100 percent of the funds necessary for the planning of a public telecommunications construction project.

(b) Construction Grants

(1) A Federal grant award for the construction of a public telecommunications facility shall be an amount determined by the Agency and set forth in the grant award document, except that such amount shall not exeed 75 percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

(2) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by Federal statute.

(3) Funds supplied to an applicant by the corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear compelling showing of need.

Applicants should note that expenditure of local matching funds prior to the award of a grant is at the applicant's own risk. The exact amount of the match will not be known with certainty until the final award agreement is negotiated. Therefore, should the applicant's expenditure of non-Federal funds exceed the non-Federal share which will be established in the final award agreement, the Federal share of the total project cost will be reduced by a corresponding amount and a penalty could be applied. If the amount already spent at the local level is substantial portion of the amount negotiated as the total project cost, the action could result in cancellation of the grant offer.

VII. Selection Process and Project Period

PTFP grants are awarded on the basis of a competitive review process. This includes several grant review panels, which apply the Funding Criteria in Section V listed above. The Agency determines the selection of grantees according to the Priorities listed in Section III above and the evaluation of the applications by the various review panels.

The period for which a planning grant may be made is one year, whereas the period for which a construction grant may be made is two years. Although these timeframes are generally applied to the award of all PTFP grants, variances in project periods may be made based on specific circumstances of an individual proposal.

VIII. Filing Applications

Applications delivered by mail must be *received* no later than close of business, March 17, 1987, and must be addressed to: Public Telecommunications Facilities Program, NTIA/DOC, Room 4625, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Applications *delivered by hand* must be delivered to the above address between 8:30 a.m. and 5:00 p.m. on or before close of business March 17, 1987. Applicants whose applications are not received by close of business March 17, 1987, will be notified that their applications will not be considered in

the current competition and will be returned.

NTIA requires that all applicants whose proposed projects need authorization from the Federal Communications Commission (FCC), must tender an application to the FCC for such authority on or before March 17, 1987. (An application is tendered to the FCC when it has been received by the Secretary of the FCC.) However, you are urged to submit it with as much lead time before the PTFP closing date as possible. The greater the lead time, the better the chance your FCC application will be processed to coincide with NTIA's grant cycle. NTIA will return the application of any applicant which fails to tender an application to the FCC for any necessary authority on or before March 17, 1987.

Authority: The Public Telecommunications Financing Act of 1978, 47 U.S.C. 390–394, 397–399b (Act); as amended by the Public Broadcasting Amendments of 1981, Pub. L. 97–35, 95 Stat. 725 (1981 Amendments), as amended by the Consolidated Ominibus Budget Reconciliation Act of 1985, Pub. L. 99–272, secs. 5001, 100 Stat. 82, 117 (1986).

(Catalog of Federal Domestic Assistance No. 11.550)

Dennis R. Connors,

Director, Office of Policy Coordination and Management.

[FR Doc. 87–2147 Filed 2–2–87; 8:45 am]

BILLING CODE 3510–60–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

January 28, 1987.

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 February 2, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

The Bilateral Cotton and Man-Made Fiber Textile Agreement of February 19 and 24, 1986, as amended, between the Governments of the United States and the People's Republic of Bangladesh, establishes specific limits for cotton and man-made fiber textile products in Categories 331, 334, 335, 340/640, 341, 347/348 and 635, produced or manufactured in Bangladesh and exported during the twelve-month period which begins on February 1, 1987 and extends through January 31, 1988. In the letter which follows this notice the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports in these categories at the designated 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), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

January 28, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 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 Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement of February 19 and 24, 1986, as amended, between the Governments of the United States and the People's Republic of Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 2, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 331, 334, 335, 340/640, 341, 347/348 and 635, produced or manufactured in Bangladesh and exported during the twelve-month period which begins on February 1, 1987 and extends through January 31, 1988, in excess of the following limits:

Category	12-month restraint limit [1]
331	535,300 dozen pairs.
334	63,600 dozen.
335	116,600 dozen.
340/640	1,378,000 dozen of which not more than 318,000 dozen shall be in yarn-dyed shirts in Category 340-Y/640-Y.[2]
341	1,166,000 dozen.
347/348	1,049,400 dozen.
635	153,700 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1987.

[2] In Categories 340 only TSUSA numbers 381.0522, 381.5500, 381.5610, 381.5625, 381.5637, and 381.5660. In Category 640 only TSUSA numbers 381.3132, 381.3142, 381.3152, 381.9535, 381.9547, and 381.9550.

In carrying out this directive, entries of cotton and man-made fiber textile products listed in the table above, which have been exported during previously established restraint periods, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during those periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The foregoing limits are subject to adjustment in the future according to the terms of the bilateral agreement of February 19 and 24, 1986, as amended, which provide in part, that specific limits may be adjusted by designated percentages for carryover. Appropriate adjustments 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, 19843 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–2118 Filed 2–2–87; 8:45 am]

BILLING CODE 3510–DR–M

Cancelling Staged Entry for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

January 29, 1987.

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 February 2, 1987. 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, 1986, a notice was published in the **Federal Register** (51 FR 47041), which, among other things, established staged entry periods for imports of cotton and man-made fiber textile products in Categories 314, 341, 342, 636, 641, and 645/646, produced or manufactured in the People's Republic of China and exported during the period which began on January 1, 1986 and extends through December 31, 1986. Inasmuch as it has been determined that these staged entry periods are no longer needed, they are being cancelled.

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), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 29, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on February 2, 1987, you cancel the staged entry periods established in the directive of December 23, 1986 for cotton and man-made fiber textile products in Categories 314, 341, 342, 636, 641, and 645/646, produced or manufactured in the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a) (1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the implementation of Textile Agreements.

[FR Doc. 87–2117 Filed 2–2–87; 8:45 am]

BILLING CODE 3510-DR-M

Extending Coverage of the Hong Kong Export Visa Requirement To Include Textiles and Textile Products of Vegetable Fibers (Other Than Cotton), Silk Blends, and Man-Made Fiber Textile Products in Category 670; Correction

In paragraph 2 of the letter to the Commissioner of Customs, published in the **Federal Register** on July 30, 1986 (51 FR 27235), insert the following language at the end of the second sentence:

This directive will also apply to merchandise in Categories 845(2) and 846(2) which are assembled in Hong Kong from parts made elsewhere and exported to the United States on and after August 1, 1986. These products must have an appropriate export visa from Hong Kong or they will be denied entry or withdrawal from warehouse for consumption.

Donal R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR. Doc. 87–2116 Filed 2–2–87; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consulations With the Government of Sri Lanka To Review Trade in Category 638/639

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 February 3, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–6736. For information on embargoes and quota re-openings, please call (202) 377–3715. For information on categories on which consulations have been requested call (202) 377–3740.

Background

On November 28, 1986, the Government of the United States requested consulatons with the Government of Sri Lanka with respect to category 638/639 man-made fiber knit shirts and blouses. This request was made under the libateral agreement between the Governments of the United States and Sri Lanka of May 10, 1983, as amended, relating to trade in cotton, wool and man-made fiber textile products which permits the United States to request consultations when imports from Sri Lanka threaten or cause market disruption.

According to the terms of the bilateral agreement, if no mutually satisfactory solution is reached during consulations, the United States may establish prorated specific limits for the period which began on November 28, 1986 and extends through May 31, 1987 at a level of 193,152 dozen.

The Government of the United States has decided, pending a mutually satisfactory solution, to control imports in Category 638/639 exported during the ninety-day consulation period which began on November 28, 1986 and extends through February 25, 1987 at the prescribed limit of 111,150 dozen.

In the event the limit established for the ninety-day period is exceeded, such excess amounts, if allowed to enter, may be charged to the prorated specific limit specified above.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consulations with the Government of Sri Lanka, further notice will be published in the **Federal Register.**

A summary market statement for this category follows this notice.

A description of the cotton, wool and man-made fiber 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 (48 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 (1987).

Anyone wishing to comment or provide data or information regarding the treatment of Category 638/639 under the agreement with Sri Lanka, or on any other aspect thereof, or to comment on domestic production or availability of

textile products included in this category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consulations is not yet certain, comments should be submitted in response to this notice will be available for public inspection on the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a) (1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Sri Lanka—Market Statement

Category 638/639—Man-Made Fiber Knit Shirts and Blouses

November 1986.

Summary and Conclusions

U.S. imports of Category 638/639 from Sri Lanka were 409,772 dozen during the year ending September 1986, 12 percent above the 364,815 dozen imported a year earlier. During the first nine months of 1986, imports of Category 638/639 from Sri Lanka were 393,058 dozen, 53 percent above the 256,749 dozen imported during the same period in 1985 and 44 percent above the amount imported during calendar year 1985.

The U.S. market for Category 638/639 has been disrupted by imports. The sharp and substantial increase of imports from Sri Lanka has contributed to this disruption.

U.S. Production and Market Share

U.S. production of man-made fiber knit shirts and blouses has been on the decline since 1982, falling 14 percent from 57,668 thousand dozen in 1982 to 49,687 thousand dozen in 1985. The U.S. producers' share of this market fell from 73 percent in 1982 to 67 percent in 1985. The U.S. market share is expected to fall to 59 percent in 1986.

U.S. Imports and Import Penetration

U.S. imports of Category 638/639 grew from 21,075 thousand dozen in 1982 to 24,976 thousand dozen in 1985, a 19 percent increase. Imports increased dramatically in 1986. Category 638/639 imports during the first nine months of 1986 reached 25,455 thousand dozen, 40 percent above the 18,214 thousand dozen imported during the same period of 1985. The ratio of imports to domestic production increased from 37 percent in 1982 to 50 percent inf 1985. Assuming the 1986 U.S. Category 639 production reaches the 1985 level and annualizing January–September 1986 imports, the import-to-production ratio increases to 68 percent in 1986.

Duty-Paid Value and U.S. Producer Price

Approximately 53 percent of the imports of Category 638/639 from Sri Lanka during the first nine months of 1986 entered under TSUSA numbers 384.8012—women's man-made fiber knit blouses, excluding tank tops, not ornamented; and 384.8045—women's man-made fiber knit shirts, excluding sweatshirts and T-shirts, not ornamented. These garments entered the U.S. at duty paid landed values below U.S. producers' prices for comparable garments.

Committee for the Implementation of Textile Agreements

January 29, 1987.

Commissioner of Customs, Department of the Treasury, Washington, DC 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 further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 3, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 638/639, produced or manufactured in Sri Lanka and exported during the ninety-day period which began on November 28, 1986 and extends through February 25, 1987, in excess of 111,150 dozen.[1]

Textile products in Category 638/639 which have been exported to the United States prior to November 28, 1986 shall not be subject to this directive.

Textile products in Category 638/639 which have been released form 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.

A description of the cotton, wool and man-made fiber 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 (1987).

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 this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a) (1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–2119 Filed 2–2–87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after November 27, 1986.

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

ADDRESS: Persons wishing to comment on this information collection should contact Robert Neal, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503, (202) 395–7231. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254–9735.

Title: Regulations Governing Bankruptcies of Commodity Brokers.
Control No.: 3038–0021
Action: Extension
Respondents: Businesses (excluding small businesses)
Estimated Annual Burden: 800.5 hours
Estimated Number of Respondents: 402.

Issued in Washington, DC, on January 29, 1987.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–2098 Filed 2–2–87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thurs and Fri, 19–20 February 1987.

Times of Meeting: 0900–1700 hours each day.

Place: Pentagon, Wash, DC.

Agenda: The Army Science Board Summer Study Panel for Army Force Cost Drivers will meet at the Pentagon for the purpose of reviewing the specific Army environment (battlefield and natural) requirements and their conversion to military specifications for the acquisition and procurement of selected pieces of equipment and systems. AMC project managers (PM) and TRADOC systems managers (TSM) will present briefings concerning this process for their systems. OTEA will brief on how these systems were or are being tested and evaluated against the environmental military specifications established by AMC. The panel will also receive a briefing on the military application of advanced high technology to future Army systems. i.e., Directed Energy Weapons (DEW), etc. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–2088 Filed 2–2–87; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract No. S–IA–146, to the IAEA Safeguards Analytical Laboratory, Vienna Austria, 18.771 grams of plutonium, enriched to 93.38 percent in the isotopes plutonium–239 and 241, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: January 28, 1987.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–2143 Filed 2–2–87; 8:45 am]

BILLING CODE 6450–01–M

Alaska Power Administration

Revised Divestiture Work Plan

AGENCY: Alaska Power Administration, DOE.

ACTION: Notice of availability of revised divestitute work plan and new reports addressing alternative sale structures and asset valuation; request for comments on revised work plan.

SUMMARY: On July 28, 1986, the Alaska Power Administration (APAd) published in the **Federal Register** (51 FR 26924) notice of the availability of its July 1986 "Work Plan" and "Alternative Structures" report, both relating to divestiture of the Eklutna and Snettisham Hydroelectric Projects, and invited public comments regarding them. In accordance with the July Work Plan, APAd obtained through a consulting contract reports presenting an independent asset valuation and further advice on alternative sale structures. After considering comments received and all other new information, APAd has revised its Divestiture Work Plan. Notice is hereby given that the consultant's reports on asset valuation and review of alternative sale structures, and APAd's revised Divestiture Work Plan are available for public review. APAd invites public comments on the Revised Work Plan.

DATES: The consultant's reports on asset valuation and review of alternative sale structures, and APAd's Revised Divestiture Work Plan are available immediately upon request at the address below at no charge

Written comments received by March 10, 1987, will be considered before implementing the Plan.

ADDRESS: Requests for the above reports may be mailed to Administrator, Alaska Power Administration, P.O. Box 020050, Juneau, Alaska, 99802, or picked up in Room 835, Juneau Federal Building, 709 West Ninth Street, Juneau, Alaska, between 8 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert J. Cross, Administrator, or Helen E. Heim, Assistant to the Administrator, at the address above or 907/586–7405 (Commercial and FTS).

SUPPLEMENTARY INFORMATION: The Alaska Power Administration (APAd) is a unit of the U.S. Department of Energy and is responsible for operation, maintenance, transmission and power marketing for the two Federal hydroelectric projects in Alaska. These are the 30,000 kilowatt Eklutna Project which has served the Anchorage and Palmer areas since 1955, and the 47,160 kilowatt Snettisham Project which has been Juneau's main power source since 1975.

An expansion of the Snettisham Project—the 31,000 kilowatt Crater Lake Unit—is under construction by the Corps of Engineers, with power production expected in October 1988.

APAd sells power at wholesale to five electric utilities and to the State of Alaska for a State-owned hatchery facility at Snettisham.

Sale of the projects to the State of Alaska or other non-Federal owner was proposed along with the President's budgets for FY 1986 and 1987.

APAd and the State of Alaska Office of Management and Budget prepared a study and report on issues surrounding the proposed sale (*Alaska Power Administration Transfer Study*, April, 1986). The report identified as potential purchasers electric utilities now served by the two projects and the State of Alaska through its Alaska Power Authority. The report contains considerable information on the two projects, as well as information on APAd's organization and finances.

APAd published in the Federal Register notice of the availability of its July, 1986, *Divestiture Work Plan* and draft report *Alternative Structures for Sale of Alaska Power Administration*, and invited public comment on them by September 15, 1986. Written comments were received from State and local officials, electric utilities, utility associations, and others. In accordance

with the July "Work Plan", APAd obtained through a consulting contract reports presenting an independent valuation of APAd assets and a further review of alternative sale structures.

APAd has revised its "Work Plan" considering comments received and all other new information. The revisions include: Additional opportunities for public review and comment; statements of priorities for divestiture goals, objectives, and guidelines; and schedule revisions to allow additional time for preparing purchase proposals.

The revised "Work Plan" retains the objectives of obtaining in 1987 workable proposals for sale of the projects which would then be presented for consideration by the Congress. It is hoped that Congressional authorization, implementation of the sale, and closeout of APAd can be accomplished by the end of FY 1989, or possibly sooner.

The Revised Divestiture Work Plan and the consultant's reports are available to all interested parties upon request at the address published above.

Comments are requested in writing on the revised "Work Plan". Comments should be directed to APAd at the address published above. Comments received by March 10, 1987, will be considered prior to implementing the revised Plan.

Robert J. Cross,

Administrator.

[FR Doc. 87-2044 Filed 2-2-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-C&E-86-02; OFP Case No. 62022-9329-20-24]

Order Granting Florida Energy Partners Limited Partnership and Metropolitan Dade County Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting exemption.

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 Florida Energy Partners Limited Partnership and Metropolitan Dade County. (petitioners). The permanent cogeneration exemption permits the use of natural gas as the primary energy source, for the proposed cogeneration facility to be located in Miami, Florida. The final exemption order and detailed information are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order shall take effect on April 6, 1987.

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 CONTACT:

Myra Couch, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-093, Washington, DC 20585, Telephone (202) 586-6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building—Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6749

SUPPLEMENTARY INFORMATION: The facility for which the petitioners are requesting a permanent cogeneration exemption is a 27.9 MW gas turbine generator in Miami, Florida, which will provide all the current and future electrical and air conditioning requirements for the Downtown Government Center. Florida Power & Light will purchase over 50 percent of electricity produced. The system will consist of a gas turbine, a waste heat recovery boiler, and extraction/condensing steam turbine generator. The facility will burn natural gas and will be capable of utilizing #2 oil as a back-up fuel.

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 November 20, 1986, (51 FR 32836), 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 January 5, 1987; no comments were received and no hearing was requested.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that petitioners have 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 the petitioners to permit the use of natural gas as the primary energy source for their cogeneration facility.

Pursuant to section 702(c) of the Act of 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 27, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-2140 Filed 2-2-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-23; OFP Case No. 55118-9352-03-12]

Acceptance of Petition for Exemption and Availability of Certification by General Electric Co., Mt. Vernon, IN

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On December 23, 1986, General Electric Company (GE or the petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption based on the "lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum" for its proposed new boilerhouse No. II, Boiler #3, at it's plant in Mt. Vernon, Indiana, 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"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new major fuel burning installation and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of

Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type of exemption from the prohibitions of Title II of FUA are found in 10 CFR 503.32.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before March 20, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-87-23 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 586-8233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6947

SUPPLEMENTARY INFORMATION: The proposed gas boiler will be a field erected unit rated at 250 MM BTU/hr heat input, and 206 M lb/hr steam output at 615 psig and 550°F temperature. The boiler will be located in an addition to Boilerhouse No. II, which currently operates two coal boilers of the same capacity as the proposed gas boiler.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify the petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that GE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this instance.

Issued in Washington, DC, on January 27, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-2141 Filed 2-2-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-22; OFP Case No. 65045-6351-20, 21-22]

Acceptance of Petition for Exemption and Availability of Certification by Ocean State Power, Burrillville, RI

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On December 31, 1986, Ocean State Power (Ocean State or the petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption based on the "lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum" for a proposed combined cycle powerplant to be located in Burrillville, Rhode Island, 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"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type of exemption from the prohibitions of Title II of FUA are found in 10 CFR 503.32.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before March 20, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-87-22 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:
Ellen Russell, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 586-9624
Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6947

SUPPLEMENTARY INFORMATION: Ocean State proposes to install a gas fired combined cycle powerplant at its Burrilleville, Rhode Island site. The plant, with a planned generating capacity of 470 MW, will consist of two combined cycle units, each will have two gas fired combustion turbines that exhaust into a two-pressure level, heat recovery steam generator. The first of the two powerplants is scheduled to be placed in service on or about November 1, 1989. The on-line date for the second powerplant has not yet been determined. Electricity from the Burrilleville facility will be supplied to the New England Power Pool.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify the petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.;* and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the request exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Ocean State is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on January 27, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-2142 Filed 2-2-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA87-5-20-000 and 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 28, 1987.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 21, 1987, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets:

Substitute Twelfth Revised Sheet No. 204
Thirteenth Revised Sheet No. 204

Algonquin states that the above-mentioned tariff sheets are being filed pursuant to the provisions of section 7 of Algonquin's Rate Schedule F-3 to reflect in its rates under Rate Schedule F-3 changes in the underlying rates of its pipeline supplier National Fuel Gas Supply Corporation ("National Fuel") as set forth in National Fuel's Motion filing in Docket No. RP86-136-000 and its semi-annual PGA filing in Docket No. TA87-2-16-000.

Algonquin requests that the Commission accept Substitute Twelfth Revised Sheet No. 204 and Thirteenth Revised Sheet No. 204 to be effective January 1, 1987 and February 1, 1987, respectively, to coincide with the proposed effective dates of National Fuel's rate changes.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 5, 1987. 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. 87-2101 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-6-20-000 and 001]

Algonquin Gas Transmission Co., Proposed Changes in FERC Gas Tariff

January 28, 1987.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 23, 1987, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets:

Eleventh Revised Sheet No. 205

Algonquin states that the above-mentioned tariff sheet is being filed pursuant to the provisions of section 7 of Algonquin's Rate Schedule F-4 to reflect in its rates under Rate Schedule F-4 changes in the underlying rates of its pipeline supplier Texas Eastern Transmission Corporation ("Texas Eastern") as set forth in Texas Eastern's semi-annual PGA filing of December 31, 1986.

Algonquin requests that the Commission accept Eleventh Revised Sheet No. 205 to be effective February 1, 1987 to coincide with the proposed effective date of Texas Eastern's rate change.

Algonquin notes that a copy of this filing is being served upon each affected party and interested State commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 5, 1987. 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. 87-2102 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9693-005 et al.]

Birch Power Co. et al; Surrender of Preliminary Permits

January 23, 1987.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Birch Power Co.

[Project No. 9693-005]

Take notice that the Birch Power Company, Permittee for the Challis Canal Hydropower Project No. 9693, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9693 was issued May 13, 1986, and would have expired April 30, 1989. The project would have been located on the Salmon River at the Challis Canal near Challis, Custer County, Idaho.

The Permittee filed the request on December 22, 1986.

2. Cedar Creek Limited Partnership

[Project No. 9612-002]

Take notice that Cedar Creek Limited Partnership, permittee for the Cedar Creek Project No. 9612, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 30, 1986, and would have expired on April 30, 1989. The project would have been located on Cedar Creek and an unnamed tributary of Cedar Creek in Madison County, Montana.

The permittee filed the request on December 15, 1986.

3. Dam Eleven Hydro Partners

[Project No. 9912-002]

Take notice that Dam Eleven Hydro Partners, permittee for the Kentucky River Lock & Dam Number Eleven Project No. 9912, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9912 was issued on June 23, 1986, and would have expired on May 31, 1989. The project would have been located on the Kentucky River in Madison and Estill Counties, Kentucky.

The permittee filed the request on January 13, 1987.

4. Dam Eight Hydro Partners

[Project No. 9909-002]

Take notice that Dam Eight Hydro Partners, permittee for the Kentucky River Lock & Dam Number Eight Project No. 9909, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9909 was issued on June 23, 1986, and would have expired on May 31, 1989. The project would have been located on the Kentucky River in Jessamine County, Kentucky.

The permittee filed the request on January 13, 1987.

5. Dam Fourteen Hydro Partners

[Project No. 9915-002]

Take notice that Dam Fourteen Hydro Partners, permittee for the Kentucky River Lock & Dam Number Fourteen Project No. 9915, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9915 was issued on June 23, 1986, and would have expired on May 31, 1989. The project would have been located on the Kentucky River in Lee County, Kentucky.

The permittee filed the request on January 13, 1987.

6. Dam Nine Hydro Partners

[Project No. 9910-002]

Take notice that Dam Nine Hydro Partners, permittee for the Kentucky River Lock & Dam Number Nine Project No. 9910, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9910 was issued on June 26, 1986, and would have expired on May 31, 1989. The project would have been located on the Kentucky River in Jessamine and Madison Counties, Kentucky.

The permittee filed the request on January 13, 1987.

7. Dam Ten Hydro Partners

[Project No. 9911-002]

Take notice that Dam Ten Hydro Partners, permittee for the Kentucky River Lock & Dam Number Ten Project No. 9911, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9911 was issued on June 23, 1986, and would have expired on May 31, 1989. The project would have been located on the Kentucky River in Madison and Clark Counties, Kentucky.

The permittee filed the request on January 13, 1987.

8. Dam Three Hydro Partners

[Project No. 9908-002]

Take notice that Dam Three Hydro Partners, permittee for the Kentucky River Lock & Dam Number Three Project No. 9908, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9908 was issued on June 23, 1986, and would have expired on May 31, 1989. The project would have been located on the

Kentucky River in Henry and Owen Counties, Kentucky.

The permittee filed the request on January 13, 1987.

9. Dam Twelve Hydro Partners

[Project No. 9913–002]

Take notice that Dam Twelve Hydro Partners, permittee for the Kentucky River Lock & Dam Number Twelve Project No. 9913, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9913 was issued on June 23, 1986, and would have expired on May 31, 1989. The project would have been located on the Kentucky River in Estill County, Kentucky.

The permittee filed the request on January 13, 1987.

10. Edwin F. Slowick

[Project No. 8616.001]

Take notice that the Edwin F. Slowick, permittee for the Hennicker Falls Project No. 8616 has requested that the preliminary permit be terminated. The preliminary permit for Project No. 8616 was issued on May 17, 1985, and would have expired on April 30, 1987. The project would have been located on the Contoocook River, in Merrimack County, New Hampshire.

The permittee filed the request on December 15, 1986.

11. Hyrum Associates

[Project No. 9203–002]

Take notice that Hyrum Associates, permittee for the proposed Hyrum Hydro Project No. 9203, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 21, 1985, and would have expired on October 31, 1988. The project would have been located on Little Bear River in Cache County, Utah. The permittee states that the project would not be economically feasible to develop at this time.

The permittee filed the request on January 5, 1987.

12. Midway Associates

[Project No. 9667–001]

Take notice that Midway Associates, permittee for the proposed Pine Creek Project No. 9667, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 2, 1986, and would have expired on April 30, 1989. The project would have been located on Pine Creek in Wasatch County, Utah. The permittee states that the project would not be economically feasible to develop at this time.

The permittee filed the request on January 5, 1987.

13. Newton Associates

[Project No. 9220–001]

Take notice that Newton Associates, permittee for the proposed Newton Hydro Project No. 9220, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 21, 1985, and would have expired on October 31, 1988. The project would have been located on Clarkston Creek in Cache County, Utah. The permittee states that the project would not be economically feasible to develop at this time.

The permittee filed the request on January 5, 1987.

14. Nine Mile Associates

[Project No. 9235–001]

Take notice that Nine Mile Associates, permittee for the proposed Nine Mile Hydro Project No. 9235, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 27, 1985, and would have expired on October 31, 1988. The project would have been located on Six Mile Creek in Sanpete County, Utah. The permittee states that the project would not be economically feasible to develop at this time.

The permittee filed the request on January 5, 1987.

15. Sheep Falls Associates

[Project No. 9315–004]

Take notice that Sheep Falls Associates, permittee for the Sheep Falls Project No. 9315, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9315 was issued on December 13, 1985, and would have expired on November 30, 1988. The project would have been located on Henry's Fork River in Fremont County, Idaho, within the Targhee National Forest.

The permittee filed the request on December 30, 1986.

Standard Paragraph

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–2110 Filed 2–2–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM85–1–180]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Bishop Pipeline Corp.; Order Denying Rehearing

Issued: January 27, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Bishop Pipeline Corporation has filed a timely request for rehearing of the order issued in *Bishop Pipeline Corporation*, 37 FERC § 61,029 (October 20, 1986). We will deny rehearing.

Background

Bishop entered into a transportation contract with Tennessee Gas Pipeline Company, a Division of Tenneco Inc. that specified three receipt points. An amendment to the contract, executed on October 7, 1985, referred to a specific well in connection with each of the receipt points. Bishop stated that the amendment was not meant to restrict the receipt of gas for transportation to specific wells and contended that "where both parties to the contract ascribe to it a common interpretation, that interpretation will be controlling because the parties to the contract 'know what they intended.' " We denied Bishop's request and relied on *U.S. Steel*, 34 FERC ¶ 61,199, *reh'g denied*, 35 FERC ¶ 61,261 (1986), in holding that it would be "inappropriate . . . to ignore one provision in the context merely to permit another provision to take effect, or to rewrite a contract to conform it to our presumption of what the parties may have intended."

In its request for rehearing, Bishop contends that we erred in limiting the transportation service to the wells identified in the October 7 amendment. Bishop asserts that: (1) We "misapplied principles of contract construction by failing to consider Bishop's argument that the contract was ambiguous"; (2) we departed from our policy in *Pennzoil Co. v. FERC*, 645 F.2d 360 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982), which held that, in the absence of probative extrenic evidence to the contrary, the mutual interpretation of the parties to the contract is controlling; and (3) we failed to give any weight to the "undisputed mutual intent of the parties."

Discussion

In interpreting a contract, we must examine the intent of the parties. *Pennzoil*, 645 F.2d at 388. *See also Sunbury Textile Mills, Inc. v. Commissioner*, 585 F.2d 1190, 1195 (3rd

Cir. 1978). Where a contract is ambiguous, extrinsic evidence can be examined to contradict the terms of a contract. *Sunbury*, 585 F.2d at 1196. In an attempt to clarify that the intent of the parties was not to limit the receipt of gas to certain wells, Bishop states that the identification of the wells was a practice *under* the contract, *not* a modification thereof, and was intended simply to permit Tennessee to review the operational and regulatory acceptability of the sources, types and volumes of gas before it was received by Tennessee." (Emphasis in Bishop's request.)

However, the interpretation of a contract advanced by the parties should not be controlling where the statement offered by the parties concerning their intent is not persuasive. If the wells had to be identified in advance so that Tennessee could review the sources, types, and volumes of gas before receipt, it is logical to conclude that other wells could not be added to the transportation service if they had not also been identified in advance in order to review the same factors. Bishop's statement that the parties did not intend to limit the transaction to the identified wells is simply not persuasive in light of the explanation offered by Bishop. Accordingly, we find that the language of the contract should control. In this instance, the contract, on its face, appears to limit the transportation of gas from the wells specified. Inasmuch as no persuasive reason has been offered for a contrary interpretation, Bishop's request for rehearing is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2099 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-216-000 et al.]

Electric Rate and Corporate Regulation Filings; Dayton Power & Light Co. et al.

January 21, 1987.

Take notice that the following filings have been made with the Commission:

1. Dayton Power & Light Co.

[Docket No. ER87-216-000]

Take notice that on January 12, 1987, The Dayton Power and Light Company (DP&L) tendered for filing an executed Agreement (Agreement) between DP&L and the City of Piqua, Ohio (Piqua).

The proposed Agreement modifies the rates and charges associated with the Short Term and Emergency Schedules of the Interconnection Agreement dated May 10, 1972.

DP&L and Piqua have requested the Commission to waive its notice and filing requirements and permit the Short Term modification to become effective January 1, 1987 and the Emergency modification to become effective immediately.

Comment date: February 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corp.

[Docket No. EL87-10-000]

Take notice that on January 16, 1987, Central Vermont Public Service Corporation ("Central Vermont") tendered for filing a request for (1) a declaratory order disclaiming jurisdction over a planned corporate reorganization or (2) if such order is not issued, then an order granting any authorization needed to permit the reorganization to go forward.

Central Vermont conducts an electric generation, transmission and distribution business in the state of Vermont. Central Vermont's subsidiary, Connecticut Valley Electric Company, Inc. ("Conn Valley") conducts an electric distribution business in an adjacent service area in the state of New Hampshire. Under the proposed corporate reorganization, Central Vermont would become a direct wholly owned subsidiary of an as yet unnamed parent corporation ("the Parent"). Conn Valley also would become a direct wholly owned subsidiary of the Parent. The Parent would directly own two newly organized businesses, a generation subsidiary which would engage in new generating projects and an energy services subsidiary which would engage in an energy conservation business on a shared savings basis.

Central Vermont states that the corporate reorganization does not involve any of the elements required for Commission jurisdiction under section 203 of the Federal Power Act since there will be no disposition by Central Vermont or Conn Valley of its jurisdiction facilities, no merger or consolidation of jurisdiction facilities with those of another person and no acquisition by Central Vermont or Conn Valley of the securities of another public utility. Central Vermont states that, because any aspect of the transaction involving the issuance of securities by Central Vermont will be authorized by the Vermont Public Service Board, the Commission, under section 204(f), is without jurisdiction to authorize such issuance.

Central Vermont states that the corporate reorganization is consistent with the public interest.

Comment date: February 5, 1987, in accordance with Standard Paragraph E at the end of this document.

3. Northern Indiana Public Service Co.

[Docket No. EC87-8-000]

Take notice that on January 12, 1987, Northern Indiana Public Service Company (Applicant) filed an application for an order of the Federal Energy Regulatory Commission pursuant to section 203 of the Federal Power Act authorizing Applicant to sell and dispose of to the City of Rensselaer, an Indiana municipality, certain electric substation facilities installed to provide electric service to the City of Rensselaer. The sale becomes effective upon approval by the Federal Energy Regulatory Commission.

Comment date: February 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Co. (Minnesota); Northern States Power Co. (Wisconsin)

[Docket No. EC87-215-000]

Take notice that on January 12, 1987, Northern States Power (Minnesota) and Northern States Power Company (Wisconsin) ("the NSP Companies") jointly tendered for filing an amendment dated January 9, 1987, of the Settlement Agreement dated May 31, 1985, in Docket No. ER84-690-000. The Amendment of Settlement Agreement: (1) Reduces the common equity return under the NSP Companies' Interchange Agreement from 15% to 12.25%, effective January 1, 1987, and (2) adopts a procedure under which the NSP Companies, as of the first of each year, will revise the common equity return in the Interchange Agreement to the level of the quarterly adjusted generic equity return promulgated by the Commission for effectiveness on November 1 of the preceding year.

The NSP Companies request waiver of notice requirements to allow the filing to become effective as of January 1, 1987. Copies of the filing have been mailed to the wholesale customers of the NSP Companies and the parties to the earlier Settlement Agreement, including the Public Service Commissions of Minnesota, Michigan, North Dakota, South Dakota and Wisconsin.

Comment date: February 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Co.

[Docket No. EC87-115-000]

Take notice that on January 16, 1987, Southwestern Electric Power Company ("SWEPCO") tendered for filing letters from counsel for SWEPCO and for Tex-La Electric Cooperative of Texas, Inc. ("TEX-LA") intended to clarify the parties' agreement with respect to the capacity charge reflected in the Letter Agreement between SWEPCO and TEX-LA, dated July 31, 1986, which is the subject of this proceeding. The letters state that SWEPCO and TEX-LA, recognized the interim nature of the Letter Agreement and selected the interim capacity charge contained therein only as a reasonable proxy for capacity charges which would have been imposed had SWEPCO and TEX-LA been able to complete negotiations and file a formal Power Supply Agreement before service to TEX-LA began. SWEPCO and TEX-LA have agreed that the Power Supply Agreement will provide for reconciliation of amounts paid for 1986 service under the Letter Agreement to the extent such amounts exceed or fall short of amounts which would have been due under the Power Supply Agreement if it had been in effect or filed with the Commission prior to the commencement of service by SWEPCO to TEX-LA on August 4, 1986.

SWEPCO renews its request for an effective date of July 31, 1986, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon TEX-LA and the Public Utility Commission of Texas.

Comment date: February 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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. 87-2109 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-676-000]

Equitable Gas Co. and Equitable Transmission Co.; Informal Technical Conference

January 28, 1987.

Take notice that an informal technical conference will be held at the Office of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on February 4, 1987 at 10:00 a.m. in the above-captioned matter. In Docket No. CP86-676-000, Equitable Gas Company (Equitable) and Equitable Transmission Company (Transmission) filed an application, under Section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the transfer of Equitable's jurisdictional natural gas facilities to the newly formed Transmission as part of a corporate restructuring. At the conference, various issues associated with the application will be discussed, particularly those issues raised in the interventions filed by the Pennsylvania Office of Consumer Advocate and the Pennsylvania Public Utility Commission.

All parties to this proceeding, the Commission's staff, and interested members of the public are invited to attend. However, mere attendance at the conference will not confer party status. Any person wishing to become a party to this proceeding must file a Motion to Intervene in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

For further information contact Louis J. Sacher, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8861.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2111 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2892-002]

Friant Power Authority; Availability of Environmental Assessment and Finding of No Significant Impact

January 27, 1987.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

AMENDMENTS

Project No.	Project name	State	Water body	Nearest town or county	Applicant
2892-002	Friant Fish Release Power Plant.	CA	San Joaquin River	Friant	Friant Power Authority.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2107 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

North Penn Gas Co.; Tariff Filing

[Docket No. RP85-193-002]

January 28, 1987.

Take notice that on January 21, 1987, North Penn Gas Company (North Penn) tendered for filing certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1. North Penn states that these sheets are filed pursuant to Article 20 of the Settlement Agreement approved by the Commission in its December 12, 1986 order. The tariff sheets cover the various services that the Settlement Agreement requires North Penn to offer. The proposed effective date of these tariff sheets is January 12, 1987, which is when North Penn began to provide the new services

as required by the Settlement Agreement.

North Penn has served copies of this filing on each party to this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 5, 1987. 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. 87-2112 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-33-000]

Northwest Central Pipeline Corp.; Proposed Changes in FERC Gas Tariff

January 28, 1987.

Take notice that on January 23, 1987, Northwest Central Pipeline Corporation (Northwest Central) tendered for filing a First Revised Volume No. 1 and certain revised tariff sheets to Original Volume No. 2 of its FERC Gas Tariff.[1] The proposed effective date of these tariff sheets is February 23, 1987.

Northwest Central states that the filing proposes a change in its currently effective sales and transportation rates which would result in an increase in annual revenues of approximately $4.4 million, based on the test period (the twelve months ended September 30, 1986, adjusted for known changes through June 30, 1987). The Company states that the increased rates are required to reflect an overall rate of return of 14.29 percent, increases in expenses and a decline in sales volumes.

Northwest Central also states that, in addition to a general rate increase, its filing reflects substantial revisions in the structure of its sales and transportation rates, including new demand-commodity sales rates, the inclusion of a contract demand limitation on the Company's service obligations, and related revisions to its rate schedules and general terms and conditions, as well as other changes in its tariff provisions. The Company states that these changes are designed to: (1) Implement an Order No. 436 "open access" mode of operation on its system, (2) revise the Company's rates and tariff provisions to reflect the current, highly competitive nature of the interstate natural gas business, and (3) make necessary conforming and updating revisions in the Company's tariff.

Northwest Central states that its filing was served on each of its customers and affected state commissions pursuant to § 154.16(b) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 5, 1987. 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. 87-2113 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-13633-004, et al.]

Pennzoil Co.; Merger

January 23, 1987.

Take notice that on January 15, 1987, Pennzoil Company (Pennzoil), of P.O. Box 2967, Houston, Texas 77252-2967, filed an application pursuant to § 154.92(d) of the Commission's Regulations to continue the sales of natural gas in interstate commerce previously made by Pennzoil Producing Company (PPC) and that PPC's rate schedules be redesignated as those of Pennzoil, all as more fully shown on Exhibit "C", which is on file with the Commission and open to public inspection.

Effective October 24, 1986, Pennzoil Producing Company was merged into Pennzoil Company pursuant to the terms of that certain Certificate of Ownership and Merger dated October 23, 1986 by the Secretary of State of Delaware.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 9, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT C

PPC rate schedule No.	FERC docket No.	Purchaser	Field/offshore block
42	G-13,633	United Gas Pipe Line Co	Baxterville.
63	G-13,633	United Gas Pipe Line Co	Burnell-N. Pettus.
66	G-13,633	Arkansas Louisiana Gas Co	Colquitt.
67	G-13,633	United Gas Pipe Line Co	Cotton Valley.
70	G-13,633	Trunkline Gas Co	E. Edinburg/San Carlos.

[1] Such new tariff sheets are: Original Sheet Nos. 1 through 276 to First Revised Volume No. 1 and First Revised Sheet No. 2Y, Second Revised Sheet Nos. 1, 2M and 176 Third Revised Sheet Nos. 91 and 219, and Fourth Revised Sheet No. 2A to Original Volume No. 2.

EXHIBIT C—Continued

PPC rate schedule No.	FERC docket No.	Purchaser	Field/offshore block
80	G-13,633	Trunkline Gas Co	Heard Ranch.
81	G-13,633	Val Gas Co	Hidalgo.
82	G-13,633	United Gas Pipe Line Co	Joaquin.
86	G-13,633	United Gas Pipe Line Co	Lisbon.
90	G-13,633	Southern Natural Gas Co	Logansport.
91	G-13,633	Southern Natural Gas Co	Logansport.
92	G-13,633	United Gas Pipe Line Co	Maxie-Pistol Ridge.
93	G-13,633	United Gas Pipe Line Co	E. McFaddin.
94	G-13,633	United Gas Pipe Line Co	E. McFaddin.
194	CI85-488	Primos Gathering System	Monroe.
200	G-13,633	Kerr-McGee Corp	Ruston-Unionville.
202	G-13,633	Texas Eastern Transmission Corp	San Domingo.
206	G-13,633	United Gas Pipe Line Co	Sibley.
209	G-13,633	United Gas Pipe Line Co	Soso.
210	G-13,633	United Gas Pipe Line Co	Sugar Creek.
215	G-13,633	United Gas Pipe Line Co	Lirette.
216	G-13,633	United Gas Pipe Line Co	Bay Baptiste.
218	G-13,633	United Gas Pipe Line Co	Bourg.
222	G-14,370	United Gas Pipe Line Co	Maxie-Pistol Ridge.
223	G-14,124	United Gas Pipe Line Co	Deer Island.
224	G-15,077	Southern Natural Gas Co	Dexter.
225	G-13,788	United Gas Pipe Line Co	Bayou Rambio.
227	G-17,087	Valero Interstate Transmission Co	Sheperd.
228	G-13,633	United Gas Pipe Line Co	Delarge.
229	G-13,633	United Gas Pipe Line Co	Dulac-Lapeyrouse.
230	G-18,193	Texas Gas Transmission Corp	East Lisbon.
232	G-19,209	United Gas Pipe Line Co	Calhoun.
233	G-19,450	Arkansas Louisiana Gas Co	Calhoun.
234	G-13,633	United Gas Pipe Line Co	Gibson.
237	CI60-344	Southern Natural Gas Co	Felice Bayou.
238	CI60-509	United Gas Pipe Line Co	Hynes Ranch.
239	CI60-622	United Gas Pipe Line Co	Hollywood (Houma).
240	CI61-335	United Gas Pipe Line Co	Willow Springs.
241	CI61-1041	United Gas Pipe Line Co	N. Jacksonville/Barkley.
244	CI61-1111	Transcontinental Gas Pipe Line Corp	Eugene Island 128.
245	G-13,633	United Gas Pipe Line Co	Refugio-Fox.
248	CI62-1104	United Gas Pipe Line Co	S. Downsville.
249	CI61-318	ANR Pipe Line Co	Holly Ridge.
250	CI62-639	Natural Gas Pipeline Co. of America	W. Jennings.
251	CI63-714	Texas Eastern Transmission Corp	Platt.
252	CI64-1192	United Gas Pipe Line Co	Strauch-Wilcox/San Domingo.
253	CI64-1192	United Gas Pipe Line Co	W. Tuleta.
254	CI64-1358	United Gas Pipe Line Co	Eugene Island 53.
358	G-13,633	Arkansas Louisiana Gas Co	Waskom.
259	CI66-106	Natural Gas Pipe Line Co. of America	Virginia.
261	CI67-18	Southern Natural Gas Co	Plum Point.
263	CI67-713	Southern Natural Gas Co	N. King's Ridge.
264	CI67-1763	United Gas Pipe Line Co	Kent Bayou.
265	CI68-78	United Gas Pipe Line Co	Duson.
270	CI69-522	United Gas Pipe Line Co	Pettus.
271	CI69-256	Sea Robin Pipeline Co	Ship Shoal 222.
272	CI70-577	Southern Natural Gas Co	N. King's Ridge.
274	CI70-629	Tennessee Gas Pipeline Co	South Davis.
275	CI70-767	Texas Gas Transmission Corp	Welcome.
276	G-13,633	United Gas Pipe Line Co	Agua Dulce.
280	CI72-425	Arkansas Louisiana Gas Co	Calhoun.
281	G-13,633	United Gas Pipe Line Co	Bethany.
282	G-13,633	United Gas Pipe Line Co	Greenwood-Waskom.
283	G-13,633	United Gas Pipe Line Co	Logansport.
284	G-13,633	United Gas Pipe Line Co	Waskom.
287	CI72-321	Sea Robin Pipeline Co	Ship Shoal 225.
291	G-13,633	United Gas Pipe Line Co	Sligo-Barksdale.
296	CI65-615	United Gas Pipe Line Co	Monroe.
297	CI74-244	United Gas Pipe Line Co	Ship Shoal 186.
299	CI75-232	United Gas Pipe Line Co	South Drew.
300	CI75-217	Texas Eastern Transmission Corp	Kildare.
301	CI75-242	United Gas Pipe Line Co	E. Crescent Farms.
305	G-13,633	United Gas Pipe Line Co	Greta-Tom O'Connor.
306	G-13,633 (CI77-177)	United Gas Pipe Line Co	Carthage.

EXHIBIT C—Continued

PPC rate schedule No.	FERC docket No.	Purchaser	Field/offshore block
308	CI78-996	United Gas Pipe Line Co	Kent Bayou.
310	CI76-496	United Gas Pipe Line Co	Main Pass 140.
311	CI76-634	United Gas Pipe Line Co	W. Cameron 533.
312	CI76-635	United Gas Pipe Line Co	W. Cameron 532.
313	CI77-288	Sea Robin Pipeline Co	S. Marsh Island 128.
314	CI77-611	Sea Robin Pipeline Co	S. Marsh Island 127
315	CI77-612	Sea Robin Pipeline Co	S. Marsh Island 125
316	CI79-564	United Gas Pipe Line Co	High Island 475.
317	CI80-45	ANR Pipeline Company	High Island 273.
318	CI80-175	United Gas Pipe Line Co	High Island 273
319	CI80-446	United Gas Pipe Line Co	High Island 325.
332	CI81-460	ANR Pipeline Company	High Island 325.
333	CI82-356	Tennessee Gas Pipeline Co	South Davis.
334	CI83-32	ANR Pipeline Company	High Island 351/368.
335	CI84-487	Transcontinental Gas Pipe Line Corp	Vermilion 103.
336	CI85-379	Natural Gas Pipe Line Co. of America	Escobas.
337 [1]	CI77-702 *et al.* (CI78-767)	Sea Robin Pipeline Co	8 Offshore Blocks.
338 [1]	CI77-702 *et al.* (CI78-767, CI78-499, & CI78-501).	United Gas Pipe Line Co	32 Offshore Blocks.
339 [1]	CI77-702 *et al.* (CI78-767)	United Gas Pipe Line Co	E. Cameron 237.
340 [1]	CI77-702 *et al.* (CI78-767)	United Gas Pipe Line Co	W. Cameron 352.
341 [1]	CI77-702 *et al.* (CI78-767)	Southern Natural Gas Co	W. Cameron 352.
342	CI85-295	Texas Gas Transmission Corp	Eugene Island 330/337.
343	CI78-80	Sea Robin Pipeline Co	Eugene Island 330.
344	CI78-81	Sea Robin Pipeline Co	Eugene Island 295.
345	CI78-82	Sea Robin Pipeline Co	E. Cameron 270.
346	CI78-83	United Gas Pipe Line Co	W. Cameron 587.
347	CI78-84	United Gas Pipe Line Co	Main Pass 140.
348	CI78-85	United Gas Pipe Line Co	W. Cameron 532.
349	CI78-87	United Gas Pipe Line Co	W. Cameron 533.
350	CI78-88	Sea Robin Pipeline Co	W. Cameron 533
351	CI78-90	Sea Robin Pipeline Co	W. Cameron 532.
352	CI78-86	United Gas Pipe Line Co	E. Cameron 335.
353	CI78-89	Sea Robin Pipeline Co	E. Cameron 335.
354	CI78-91	Sea Robin Pipeline Co	E. Cameron 334.
355	CI78-92	Sea Robin Pipeline Co	S. Marsh Island 128.
356	CI78-93 (CI84-126)	Southern Natural Gas Co	W. Cameron 586.
357	CI78-93 (CI84-126)	United Gas Pipe Line Co	W. Cameron 586.
358	CI78-93 (CI84-126)	United Gas Pipe Line Co	W. Cameron 586.
359	CI78-93 (CI84-126)	Southern Natural Gas Co	Vermilion 228.[2]
360	CI78-93 (CI84-126)	United Gas Pipe Line Co	Vermilion 228.[2]
361	CI78-94	Sea Robin Pipeline Co	S. Marsh Island 125.
362	CI78-95	Sea Robin Pipeline Co	S. Marsh Island 127.
363	CI78-93 (CI84-126)	United Gas Pipe Line Co	Eugene Island 256.
364	CI78-93 (CI84-126)	Southern Natural Gas Co	Eugene Island 256.
365	CI79-273	United Gas Pipe Line Co	High Island 340.
366	CI79-275	United Gas Pipe Line Co	High Island 327.
367	CI79-276	United Gas Pipe Line Co	High Island 332.
368	CI79-277	United Gas Pipe Line Co	High Island 339.
369	CI79-429	United Gas Pipe Line Co. & Southern Natural Gas Co.	W. Cameron 352.
370	CI79-563	United Gas Pipe Line Co	High Island 279.
371	CI79-567	United Gas Pipe Line Co	High Island 474.
372	CI79-568	United Gas Pipe Line Co	High Island 475.
373	CI79-569	United Gas Pipe Line Co	High Island 489.
374	CI79-565	United Gas Pipe Line Co	High Island 356.
375	CI79-566	United Gas Pipe Line Co	High Island 273.
376	CI79-570	United Gas Pipe Line Co	High Island 355.
377	CI79-583	United Gas Pipe Line Co	Main Pass 72/74.
378	CI79-585	United Gas Pipe Line Co	Main Pass 73.
379	CI79-589	United Gas Pipe Line Co	Main Pass 72.
380	CI79-590	United Gas Pipe Line Co	South Pass 78.
381	CI80-50	ANR Pipeline Co	High Island 273.
382	CI80-441	United Gas Pipe Line Co	High Island 325.
383	CI80-444	United Gas Pipe Line Co	High Island 555.
384	CI81-461	ANR Pipeline Co	High Island 325.
385	CI82-131	United Gas Pipe Line Co	South Pass 57.
386	CI82-147	United Gas Pipe Line Co	E. Cameron 237.
387	CI82-231	United Gas Pipe Line Co	High Island 499.
388	CI82-226	United Gas Pipe Line Co	High Island 570.

EXHIBIT C—Continued

PPC rate schedule No.	FERC docket No.	Purchaser	Field/offshore block
389	CI82-227	United Gas Pipe Line Co	High Island 545, 546, 547 and 548.
390	CI82-260	United Gas Pipe Line Co	High Island 563/564.
391	CI83-320	ANR Pipeline Co	High Island 351/368.
392	CI84-454	United Gas Pipe Line Co	High Island 356.
393	CI85-247	Texas Gas Transmission Corp	Eugene Island 337
394 [1]	CI77-702 *et al.* (CI78-96)	Sea Robin Pipeline Co	6 Offshore Blocks.
395 [1]	CI77-702 *et al.* (CI78-498 and CI78-500).	United Gas Pipe Line Co	High Island 323/520.
396	CI73-455-001	Sea Robin Pipeline Co	E. Cameron 270 and Eugene Island 330.
397	CI75-436	United Gas Pipe Line Co	W. Cameron 387.
398	CI77-762-001	Sea Robin Pipeline Co	Vermilion 228.[2]
399	CI78-782-002 and CI78-785-002.	United Gas Pipe Line Co	High Island 520.
400	CI78-786-001 and CI87-787-002.	United Gas Pipe Line Co	High Island 323.
401	CI79-457-001 and CI79-458-001.	United Gas Pipe Line Co	High Island 339/340.
402	CI82-420-002	United Gas Pipe Line Co	High Island 570.
403	CI84-407-001	Tennessee Gas Pipeline Co	South Pass 6.
404	CI85-443	Tennessee Gas Pipeline Co	Patterson.
405	CI77-373-001	Sea Robin Pipeline Co	W. Cameron 586.

[1] Number tentatively assigned by the Commission.
[2] Abandonment applications are pending at the Commission in the following dockets: Rate Schedules 359 and 360—Docket No. CI86-691, Rate Schedule 398—Docket No. CI86-692.

[FR Doc. 87-2108 Filed 2-2-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER87-223-000]

Southwestern Electric Power Co.; Filing

January 20, 1987.

Take notice that on January 15, 1987, Southwestern Electiric Power Compnay ("SWEPCO") tendered for filing a Power Supply Agreement, dated January 9, 1987, between SWEPCO and Rayburn Country Electric Cooperative, Inc. ("Rayburn Country"). The Power Supply Agreement provides for SWEPCO to sell to Rayburn Country all the power and energy required by Rayburn Country (in excess of the power and energy received by Rayburn Country from the Southwestern Power Administration) to meet the load of Rayburn Country's members served from the points of delivery listed in the Agreement.

SWEPCO requests an effective date of January 16, 1987, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Rayburn Country and the Public Utilities Commission of Texas.

Any person desiring to be heard or to protest this application 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 section 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 2, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2103 Filed 2-2-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP87-32-000]

Transcontinental Gas Pipe Line Corp.; Request for Waiver of Tariff Provisions

January 28, 1987.

Take notice that on January 21, 1987, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a petition for authorization for limited waiver of certain provisions of its FERC Gas Tariff.

Transco requests authorization for a limited waiver of certain provisions of its FERC Gas Tariff so as to permit Transco to avoid collection of its minimum commodity bill from its full requirement customers during the contract year commencing November 1, 1984 and ending October 31, 1985. Transco states there is good cause to allow waiver of its minimum commodity bill tariff provisions for full requirement customers who had no control over their market loss during contract year 1985.

Copies of the filing have been served on Transco's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 5, 1987. 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. 87-2105 Filed 2-2-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ID-2259-000]

Wayne D. Romberg; Filing

January 21, 1987.

Take notice that on January 12, 1987, Wayne D. Romberg, pursuant to section 305(b) of the Federal Power Act, submitted for filing a supplemental application for authority to hold the following position:

Vice President, The Connecticut Light and Power Company, Public Utility
Vice President, Western Massachusetts Electric Company, Public Utility
Vice President, Connecticut Yankee Atomic Power Company, Public Utility

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 5, 1987. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2104 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Process Gas Consumers Group, Order Denying Request for Clarification

Issued: January 27, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On December 15, 1986, Process Gas Consumers Group filed a pleading styled as a request for clarification of Order No. 436.[1] Process Gas requests clarification that substitute receipt points and suppliers may be designated in the narrow and limited situation where an end user receiving transportation under a long-term Order No. 319 agreement cannot arrange delivery of its full, contracted-for gas volumes at a pipeline receipt point designated in the agreement. The transitional regulations adopted in Order No. 436, as clarified in a number of subsequent orders, clearly preclude use of transitional authority to transport gas from new receipt points. The Process Gas request is tantamount to a request to amend Order No. 436 rather than to clarify it. Accordingly, Process Gas' request for clarification is denied.[2]

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2100 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[1] FERC Statues and Regulations, Regulation Preambles 1982-1985 ¶ 30,665; 50 F.R. 42408 (October 18, 1985).

[2] *See* Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Columbia Gas Transmission Corp., et al.), 37 FERC ¶ 61,090, issued November 5, 1986 (dismissing eleven requests for clarification of Order No. 436).

Western Area Power Administration

Public Information and Comment Forum; Proposed Salt Lake City Area Integrated Projects Power Rate

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Public information and comment forum—Proposed Salt Lake City are Integrated projects power rate.

SUMMARY: The Western Area Power Administration (Western) held a public information forum on November 20, 1986, and a public comment forum on December 18, 1986, as announced in the **Federal Register** on November 5, 1986 (51 FR 40250), to discuss the proposed power rate for the Salt Lake City Area Integrated Projects. Due to adverse weather conditions at the Salt Lake City airport, many interested parties who would have arrived by air were unable to attend the comment forum.

In addition, Western provided new information to interested parties in a December 5, 1986, letter that some customers have indicated a desire to discuss further. This letter made three points. First, Western has proposed a new power rate of 10.04 mills per kilowatt hour (kWh), a reduction of 0.21 mills per kWh from the original proposal. Second, the letter shows the new language for the power factor adjustment in the rate schedule and that proposed for the power sales contracts. Third, Western proposes to reduce the financial benefits of integration to Collbran and Rio Grande Projects customers by 25 percent from the time the Salt Lake City Area Integrated Project power rate takes effect until the post 1989 allocations become effective. This action will serve to make a reasonable transition for these customers into the 50 percent reduction in financial benefits they will receive in the post-1989 contract period. A copy of this letter may be obtained by writing the Salt Lake City Area Office at the address given below.

Therefore, Western will hold a combined public information and comment forum on February 17, 1987, at the Salt Lake City Marriott, 75 South West Temple, Salt Lake City, Utah, at 10:30 a.m. Because of the additional meeting date, the consultation and comment period is extended to end on March 4, 1987, 15 days after the public information and comment forum.

FOR FURTHER INFORMATION CONTRACT: For further information on this action, contact Mr. Lloyd Griener, Area Manager, or Ms. Marlene Moody, Deputy Area Manager, at: Salt Lake City Area Office, Western Area Power Administration, 438 East Second South, P.O. Box 11606, Salt Lake City, UT 84147, Telephone: (801) 524-5493.

Issued at Washington, DC, January 23, 1987.

Ronald K. Greenhalgh,

Assistant Administrator for Washington Liaison.

[FR Doc. 87-2043 Filed 2-2-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-6-FRL-3149.7]

Final Agency Action of a PSD Permit for Texas Industries, Inc.

Notice is hereby given that on February 19, 1986, pursuant to 40 CFR 52.21, Region 6 of the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit, number PSD-TX-632, to Texas Industries, Incorporated for approval to construct two coal-fired steam generating units at the existing cement plant located at 245 Ward Road, Midlothian, Ellis County, Texas. On March 6, 1986, Mrs. Judith Lochbrunner petitioned the Administrator for review of the PSD permit.

Because a petition for review was filed with the Administrator, the issuance of the permit was no longer a final agency action, and the PSD permit for Texas Industries, Incorporated was not effective. [*See* 40 CFR 124.15(b)(2)] The petition for review was denied by the Administrator on September 24, 1986. Pursuant to 40 CFR 124.19(f)(1), a final permit decision on PSD-TX-632

was issued by Region 6 on November 14, 1986.

Under section 307(b)(1) of the Clean Air Act, judicial review of PSD-TX-632 is available *only* by the filing of a petition for review in the United States Court of Appeals for the Fifth Circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of all of the materials concerning PSD-TX-632 are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region 6, Air, Pesticides and Toxics Division, Air Enforcement Branch, 1201 Elm Street, Dallas Texas 75270

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723

Dated January 15, 1987.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

[FR Doc. 87-2076 Filed 2-2-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-41023A]

Testing Consent Agreement Development for Chemical Substances Added to Toxic Substances Control Act Section 4(e) Priority List; Solicitation for Interested Parties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued an Interim Final Rule that amends EPA's regulations for the development and implementation of testing requirements under section 4 of the Toxic Substances Control Act (TSCA). These amendments provide for testing consent agreements between EPA and affected manufacturers, processors, and interested parties for the development of testing programs. In this notice, EPA is soliciting interest in public participation in the consent agreement process for two chemical substances. Public meetings are announced to initiate negotiations for these chemicals.

DATE: Submit written notice of interest to be designated an interested party on or before February 13, 1987.

ADDRESS: Submit written notice of interest in being designated an "interested party" in triplicate identified by the document control number (OPTS-41023A) to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M. St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460; (202) 554-1404.

Persons interested in attending the public meeting should notify EPA by telephone on or before February 13, 1987.

SUPPLEMENTARY INFORMATION: EPA has issued amendments to the procedural regulations in 40 CFR Part 790, which govern the development and implementation of testing requirements under section 4 of TSCA. These amendments established procedures for using enforceable consent agreements to develop testing requirements under section 4 of the Act. This notice serves two purposes under those procedures. First, it requests "interested parties" who wish to participate in testing negotiations for two chemicals recommended to EPA by the Interagency Testing Committee (ITC) to identify themselves to EPA. Second, it announces public meetings to initiate testing negotiations for these chemicals.

I. Identification of Interested Parties

Under 40 CFR 790.22, the testing negotiation procedures are initiated by the publication of a **Federal Register** notice which invites persons interested in participating in or monitoring negotiations for the development of a consent agreement to notify the Agency in writing. Those individuals and groups who respond to EPA's notice by the deadline established in the notice will have the status of "interested parties" and will be afforded opportunities to participate in the negotiation process. These "interested parties" will not incur any obligations by being designated "interested parties." The procedures for these negotiations are described in 40 CFR 790.22. Two chemical substances now are being considered for testing consent agreements. These substances are isopropanol (CAS No. 67-63-0), and methyl *tert*-butyl ether (CAS No. 1634-04-4). Individuals and groups desiring to have the status of "interested parties" in the development of testing consent agreements for any of these chemicals should submit a written notice of this fact to the Agency at the address given above on or before February 13, 1987.

II. Public Meetings

Public meetings may be held to initiate negotiations for these two chemicals. Persons interested in attending these meetings should notify the EPA TSCA Assistance Office by telephone at the telephone number listed above on or before February 13, 1987.

Authority: 15 U.S.C. 2603.

Dated: January 27, 1987.

J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 87-2082 Filed 2-2-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42088; FRL-3150-6]

Office of Solid Waste Chemicals; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting will be held on February 11, 1987 to inform the public of the upcoming proposed test rule for 73 chemicals that are of concern to EPA's Office of Solid Waste. The test rule will propose health effects and/or chemical fate testing of these constituents of hazardous waste.

DATE: A meeting will be held February 11, 1987 at EPA Headquarters, Rm NE-103, 401 M St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hart, Existing Chemical Assessment Division (TS-778), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-100, 401 M St., SW., Washington, DC 20460, Phone: (202) 475-8157.

SUPPLEMENTARY INFORMATION: The Agency will be issuing a proposed rule under section 4 of the Toxic Substances Control Act (TSCA) requiring health effects and/or chemical fate testing of 73 chemical substances of concern to the Office of Solid Waste. The Agency will hold a meeting to brief the public on this upcoming proposal. The meeting will be held at EPA Headquarters on February 11, 1987.

Authority: 15 U.S.C. 2603.

Dated: January 21, 1987.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 87-2081 Filed 2-2-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Establishment of New Government-Wide System of Records

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Establishment of new government-wide system of records and deletion of a FEMA system of records.

SUMMARY: The purposes of this document are to announce adoption of a new government-wide system of records entitled, "FEMA/GOVT–1, National Defense Executive Reserve System," and to delete an internal FEMA system of records entitled, "FEMA/NPP–1, National Defense Executive Reserve System."

DATE: Effective date is February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, at (202) 646–3840.

SUPPLEMENTARY INFORMATION: The proposed government-wide system notice was published in the **Federal Register** on December 5, 1986, 51 FR 43972. A new system report was filed with the Speaker of the House of Representatives, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget. During the comment period, a verbal comment was expressed by an employee of the Bureau of Mines regarding the retention and disposal section of the proposed system since it was unclear if the records retention and disposition had been approved by the National Archives and Records Administration. The National Archives and Records Administration is currently reviewing a request for these records to be included in a General Records Schedule. Since the proposed retention and disposition schedule is pending approval of the Archivist, the retention and disposal section of the system notice is being deleted in its entirety and is being replaced by the words, "Pending approval of the Archivist." For the convenience of the reader, the system notice is being republished in its entirety.

The FEMA internal system of records entitled, "FEMA/NPP–1, National Defense Executive Reserve System," which was published in the **Federal Register** on November 26, 1982, 47 FR 53493, and amended on March 11, 1985, 50 FR 9714, is being deleted concurrent with the effective date of the new government-wide system of records notice.

Dated: January 28, 1987.

George Watson,

Acting General Counsel, Federal Emergency Management Agency.

FEMA/GOVT–1

SYSTEM NAME:

National Defense Executive Reserve System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records may be maintained in the personnel office, emergency preparedness unit, or other designated offices located at the local installation of the Department or Agency which currently employs the individual.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for and incumbents of NDER assignments.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains FEMA Form 85–3, National Defense Executive Reserve Qualifications Statement, which includes such items as name, date of birth, social security number, and other personnel and administrative records, skills inventory, training data, and other related records necessary to coordinate and administer the NDER program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Defense Production Act of 1950, E.O. 11179 dated September 22, 1964, as amended by E.O. 12148 dated July 20, 1979.

PURPOSE(S):

For the purpose of establishing units of the NDER in Federal departments and agencies in accordance with E.O. 11179, as amended by E.O. 12148. Individuals voluntarily apply for assignments but would not be considered government employees to perform emergency duties unless the President of the United States declared a mobilization. Assignments are made in 3 year increments and may either be redesignated or terminated. Individuals may at any time request voluntary termination.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) Names and addresses may be made available to the Association of the National Defense Executive Reserve and the National Defense Executive Reserve Conference Association to facilitate training and relevant information dissemination efforts for reservists in the NDER program; (b) to the appropriate agency whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or issued pursuant thereto: to a Federal, State, or local agency maintaining civil, criminal, regulatory, licensing or other enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit; (c) to the National Archives and Records Administration during records management inspections conducted under authority of 44 USC 2904 and 2906; (d) to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained; (e) to another Federal agency, to a court, or a party in litigation before a court or in administrative proceeding being conducted by a Federal agency, either when the government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena; and (f) to disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Records may be stored in file folders, file cards, on microfiche, and/or automated record systems.

RETRIEVABILITY:

By name, personal data, skills or agency.

SAFEGUARDS:

Records are stored in locked file cabinets or locked rooms. Automated records are protected by restricted access procedures and audit trails. Access to records is strictly limited to those personnel whose official duties require access and who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Pending approval of the Archivist. System manager(s) and address:

Associate Director, National Preparedness Programs Directorate, Federal Emergency Management Agency, Washington, DC 20472, will maintain a computerized record of all applications and assignments of NDER reservists for the Federal government as well as the personnel files for all individuals assigned to the Federal Emergency Management Agency. The Departments or Agencies will maintain their own personnel records on those individuals assigned to their respective Department or Agency.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should submit their inquiries to: (a) NDER applicants/assignees to FEMA Headquarters—Federal Emergency Management Agency, Associate Director, National Preparedness Programs Directorate, Washington, DC 20472; (b) NDER applicants/assignees to a FEMA Regional Office—Federal Emergency Management Agency, appropriate Regional Director as identified in Appendix AA to FEMA systems of records notices; (c) NDER applicants/assignees to Federal departments and/or agencies other than FEMA—contact the agency personnel, emergency preparedness unit, or Privacy Act Officer to determine location of records within the department/agency. Individuals should include their full name, date of birth, social security number, current address, and type of assignment/agency they applied with to be an NDER reservist.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6. Individuals applying to or assigned to Federal agencies other than FEMA should consult the appropriate department's/agency's Privacy Act Regulations which can be found in that department's/agency's Code of Federal Regulations or **Federal Register** notice.

RECORD SOURCE CATEGORIES:

The individuals to whom the record pertains. Prior to being designated as an NDER reservist, the applicant must successfully complete a background investigation conducted by the Office of Personnel Management which may include reference checks of prior employers, educational institutions, police departments, neighborhoods, and present and past friends and acquaintances.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR. Doc. 87-2040 Filed 2-2-87; 8:45 am]

BILLING CODE 6718-01-M

Training and Fire Programs Directorate; Board of Visitors for the Emergency Management Institute; Open Meeting (Correction)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI)

Dates of meeting: February 12-13, 1987

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building G, Emmitsburg, MD 21727

Time: February 12—8:30 a.m. to 5:00 p.m. February 13—8:30 a.m. to agenda completion

Proposed agenda: New Business; Oath of Office for New Members; Program Orientation; Review of Course Curriculum

The meeting will be open to the public with approximately ten seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, Training and Fire Programs Directorate, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301-447-1251) on or before January 25, 1987.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Associate Director's Office, Training and Fire Programs Directorate, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: January 9, 1987.

James P. McNeill,

Associate Director, Training and Fire Programs.

[FR Doc. 87-2038 Filed 2-2-87; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-785-DR]

Major Disaster and Related Determinations American Samoa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Territory of American Samoa, (FEMA-785-DR), dated January 24, 1987, and related determinations.

DATE: January 24, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice: Notice is hereby given that, in a letter of January 24, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the Territory of America Samoa resulting from Hurricane Tusi on January 17, 1987, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the Territory of American Samoa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ms. Joan Hodgins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Territory of American Samoa to have been affected adversely by this declared major disaster and are designated eligible as follows:

The Manua Islands for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director.

[FR Doc. 87-2039 Filed 2-2-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Bank of New Hampshire 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 23, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New Hampshire Corporation,* Manchester, New Hampshire; to acquire 100 percent of the voting shares of Bank of New Hampshire-Portsmouth, Portsmouth, New Hampshire, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Peotone Bancorp, Inc.,* Peotone, Illinois; to acquire 10.83 percent of the voting shares of DuPage County Bancorp, Inc., Glendale Heights, Illinois, M.G., Bancorporation, Inc., Chicago, Illinois, and thereby indirectly acquire Mount Greenwood Bank, Chicago, Illinois, Worth Bancorp, Inc., Worth, Illinois, and thereby indirectly acquire Worth Bank and Trust, Worth, Illinois, and Illini Bancorp, Inc., Danville, Illinois, and thereby indirectly acquire The First National of Danville, Danville, Illinois.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Centre Bancshares, Inc.,* Camdenton, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank Centre, Osage Beach, Missouri, a *de novo* bank. Comments on this application must be received by February 20, 1987.

2. *U.S.B. Corporation,* Washington, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of United Southwest Bank, Washington, Indiana. United Southwest Bank engages in the sale of mortgage, casualty, personal liability, and bonding insurance.

Board of Governors of the Federal Reserve System, January 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2069 Filed 2-2-87; 8:45 am]

BILLING CODE 6210-01-M

Damariscotta Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 17, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Damariscotta Bankshares, Inc.,* Damariscotta, Maine; to become a bank holding company by acquiring 100 percent of the voting shares of Damariscotta Bank and Trust Company, Damariscotta, Maine.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation,* Columbus, Ohio; to merge with Charter 17 Bancorp, Inc., Richmond, Indiana, and thereby indirectly acquire First National Bank of Richmond, Richmond, Indiana, and Security National Bank, New Castle, Indiana. Applicant has also applied to acquire 11.9 percent of PTC Financial Corp., Peru, Indiana, and thereby indirectly acquire The Peru Trust Company, Peru, Indiana. Comments on this application must be received by February 13, 1987.

2. *CG Bancshares, Inc.,* Irvine, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Guaranty Bank, Irvine, Kentucky. Comments on this application must be received by February 20, 1987.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Community Group, Inc.,* Jasper, Tennessee; to acquire 100 percent of the voting shares of Farmers Bank of Lawrence County, Lawrenceburg, Tennessee. Comments on this application must be received by February 20, 1987.

2. *First Bancorp, Inc.,* Oneida, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of The First National Bank of Oneida, Oneida, Tennessee.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The Citizens State Corporation,* Williamsport, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens State Bank, Williamsport, Indiana.

2. *First Wisconsin Corporation,* Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Du Page Bancshares, Inc., Glen Ellyn, Illinois, and thereby indirectly acquire Du Page Bank & Trust Company, Glen Ellyn, Illinois.

3. *First Wisconsin Corporation,* Milwaukee, Wisconsin; to acquire 100

percent of the voting shares of Naper Financial Corporation, Naperville, Illinois, and thereby indirectly acquire Naper Bank Bolingbrook, Bolingbrook, Illinois, and Naper Bank, National Association, Naperville, Illinois.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texstar Financial Corporation, Inc.*, Azle, Texas; to become a bank holding company by acquiring 99.93 percent of the voting shares of First National Bank of Azle, Azle, Texas.

2. *TransTexas Bancshares, Inc.*, Beaumont, Texas; to acquire 100 percent of the voting shares of Kirbyville Bancshares, Inc., Beaumont, Texas, and thereby indirectly acquire Kirbyville State Bank, Beaumont, Texas; Newton Bancshares, Inc., Beaumont, Texas, and thereby indirectly acquire First National Bank of Newton, Newton, Texas, and First National Bank of Woodville, Woodville, Texas. Comments on this application must be received by February 23, 1987.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *U.S. Bancorp*, Portland, Oregon; to acquire 100 percent of the voting shares of Valley National Corporation, Forest Grove, Oregon, and thereby indirectly acquire Valley National Bank of Oregon, Forest Grove, Oregon.

Board of Governors of the Federal Reserve System, January 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2070 Filed 2-2-87 8:45 am]

BILLING CODE 6210-01-M

Granite State Bankshares, Inc., et al.; Notice of 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 20, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Granite State Bankshares, Inc.*, Keene, New Hampshire; to engage *de novo* through its subsidiary, GSBI Mortgage, Inc., Keene, New Hampshire, in mortgage banking activities pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 1987.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 87-2071 Filed 2-2-87; 8:45 am]

BILLING CODE 6210-01-M

The Royal Bank of Canada, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Royal Bank of Canada*, Montreal, Canada; to engage *de novo* through its subsidiary, Capel Court Pacific, Inc., Los Angeles, California, in providing portfolio investment advice and in furnishing general economic information and advice, and general economic statistical forecasting services and industry studies permitted under § 225.25(b)(4)(iii) and (iv) of the Board's Regulation Y; and also to serve as an investment advisor to a registered investment company, including sponsoring, organizing and managing a closed-end investment company, as permitted under § 225.25(b)(4)(ii) of the Board's Regulation Y.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Pennsylvania Corporation*, Philadelphia, Pennsylvania; to engage *de novo* through its subsidiary, Centre Square Investment Group, Inc., Philadelphia, Pennsylvania, in investment advisory activities pursuant to § 225.25(b)(4) of the Board's Regulation Y.

C. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Equimark Corporation,* Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Equimanagement, Inc., Pittsburgh, Pennsylvania, in collecting overdue accounts receivables, both retail and commercial, for its clients pursuant to § 225.25(b)(23) of the Board's Regulation Y.

2. *Huntington Bancshares, Incorporated,* Columbus, Ohio; to engage *de novo* through its subsidiary, The Huntington Company, Columbus, Ohio, in underwriting and dealing in government obligations or money market instruments pursuant to § 225.25(b)(16) of the Board's Regulation Y; and providing investment or financial advice solely in connection with underwriting and dealing in government obligations pursuant to § 225.25(b)(4) of the Board's Regulation Y. Comments on this application must be received by February 23, 1987.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.,* Atlanta, Georgia; to engage *de novo* through its subsidiary, SunTrust Securities, Inc., Atlanta, Georgia, in providing financial advisory services to issuers of municipal securities and to assist in the structuring of new issues of such securities, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

E. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hayesville Bancshares, Inc.,* Hayesville, Iowa; to engage directly in providing insurance agent or brokerage services for general insurance in a community that has a population not exceeding 5,000 and providing life insurance accident and health insurance property and casualty insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2072 Filed 2-2-87; 8:45 am]

BILLING CODE 6210-01-M

Trustcorp, Inc., et al., 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 24, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Trustcorp, Inc.,* Toledo, Ohio; to acquire William Fall, Inc., Perrysburg, Ohio, and thereby engage in appraisal services pursuant to § 225.25(b)(13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2073 Filed 2-2-87; 8:45 am]

BILLING CODE 6210-01-M

The Citizens and Southern Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The Companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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 Regulaton Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will 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, indentifying 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 or the offices of the Board of Governors not later than February 17, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *The Citizens and Southern Corporation.* and Citizens and Southern Georgia Corporation, both of Atlanta, Georgia; to merge with People Equity Shares, Inc., Carrollton, Georgia, and thereby indirectly acquire The Peoples Bank, Carrollton, Georgia.

In connection with this application, Applicants also propose to acquire Peoples Equity Leasing Company, Inc., Carrollton, Georgia, and thereby engage in leasing of all types of tangible personal property, including, but not limited to, automobiles, heavy equipment and phone systems, pursuant to § 225.25(b)(5) of the Board's Regulation Y; and Peoples Equity Mortgage Co., Carrollton, Georgia, and thereby engage in real estate mortgage lending activities, including origination, sales and servicing, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Pacific Western Bancshares*, San Jose, California; to acquire 100 percent of the voting shares of County Bank and Trust, Santa Cruz, California.

In connection with this application, Applicant also proposes to acquire Bancorp Capital Group, Inc., Irvine, California, and thereby engage in making and servicing loans, offering investment and financial advice, and leasing personal or real property pursuant to § 225.25(b)(1), (4), and (5) of the Board's Regulation Y. Applicant also proposes to acquire Bancorp Management Services, Inc., Santa Cruz, California, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. *Valley National Corporation*, Phoenix, Arizona; to acquire 100 percent of the voting shares of Valley Utah Bancorporation, Salt Lake City, Utah, and thereby indirectly acquire Valley Bank and Trust Company, Salt Lake City, Utah, Silver King State Bank, Salt Lake City, Utah, and Valley Central Bank, Richfield, Utah.

In connection with this application, Applicant also proposes to acquire Valley Mortgage Corporation, Salt Lake City, Utah, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1); Valley Leasing Company, Salt Lake City, Utah, and thereby engage in leasing personal or real property, pursuant to § 225.25(b)(7); and Valley Utah Life Insurance Company, Inc., Salt Lake City, Utah, and thereby engage in insurance sales pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2068 Filed 2-2-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Mental Health Advisory Board Meeting

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the meeting of the Alcohol, Drug Abuse, and Mental Health Advisory Board. This committee meeting will be open for discussion of issues in the areas of finance, research, treatment and prevention vis-a-vis the legislative mandate. The Administrator will provide an update on the President's Drug Initiative with special emphasis on the impact of recent legislation in the services and treatment area. Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Date and Time: February 25-26.

Place: Parklawn Building, 5600 Fishers Lane, Conference Room E, Rockville, Maryland 20857.

Statue of Meeting: Open.

Contact: Barbara Wagner, Room 12C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4640.

Purpose: The Board assesses the national needs for alcoholism, alcohol abuse, drug abuse, and mental health treatment and prevention services and the extent to which those needs are being met by State, local, and private programs, and programs receiving funds under Title V and Parts B and C of Title XIX of the Public Health Service Act. The Board provides advice and recommendations to the Secretary and to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration respecting these activities to assist in guiding national strategies aimed at the amelioration of alcohol, drug abuse, and mental health problems.

* * * * *

Substantive information, summaries of meetings, and rosters of committee members may be obtained from the contact person listed above.

Dated: January 27, 1987.

Brenda L. Williamson,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87-2022 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 86F-0459]

Ciba-Geigy Corp.; Filing of Food Additive Petition; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that announced the filing of a food additive petition by Ciba-Geigy Corp. This document corrects the docket number.

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

SUPPLEMENTARY INFORMATION: In FR Doc. 86-28720 appearing on page 45955 in the issue of Tuesday, December 23, 1986, in the first column, the docket number is corrected to read as set forth in the heading of this document.

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2025 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86C-0495]

The Proctor and Gamble Co.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Proctor and Gamble Co. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of the color additive mica ($K_2Al_4(Al_2Si_6O_{20})(OH)_4$ or, alternatively, $H_2KAl_3(SiO_4)_3$) for use in dentifrices that are drugs as well as cosmetics. The petitioner also requests a change in the specification for fitness to permit, but not require, a larger average particle size distribution.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402-403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 7C0207) has been filed by the Proctor and Gamble Co., 11511 Reed Hartman Highway, Cincinnati, OH

45241, proposing that § 73.1496 *Mica* (21 CFR 73.1496) be amended to provide for the safe use of mica ($K_2Al_4(Al_2Si_6O_{20})(OH)_4$ or, alternatively, $H_2KAl_3(SiO_4)_3$) in dentifrices that are drugs as well as cosmetics. The petitioner also proposes a change in the fitness specification for mica to permit, but not require, a larger average particle size distribution.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2021 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0515]

Abbott Laboratories; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Laboratories has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4-(diiodomethylsulfonyl) toluene for use as a perservative in can end and side seam cements contacting food.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3961) has been filed by Abbott Laboratories, Abbott Park, IL 60064, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of 4-(diiodomethylsulfonyl) toluene for use as a preservative in can end and side seam cements contacting food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2028 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0518]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of the reaction products of *N*-phenylbenzenamine with 2,4,4-trimethylpentene as antioxidants in lubricants with incidental food contact.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5))), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 7B3978) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of the reaction products of *N*-phenylbenzenamine with 2,4,4-trimethylpentene as antioxidants in lubricants with incidental food contact.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 24.40(c).

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2031 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0489]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly(acrylic acid-*co*-hypophosphite), sodium salt (a 4:1 to 16:1 monomer ratio by weight) as a boiler water additive.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7A3975) has been filed by the Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, proposing that § 173.310 *Boiler Water Additives* (21 CFR 173.310) be amended to provide for the safe use of poly(acrylic acid-*co*-hypophosphite), sodium salt (a 4:1 to 16:1 monomer ratio by weight) as a boiler water additive.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's findings of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2029 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0494]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-(2H-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol as

a light stabilizer for polycarbonate resins and polyethylene phthalate polymers.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 7B3976) has been filed by the Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers* (21 CFR 178.2010) be amended to provide for the safe use of 2-(2H-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol as a light stabilizer for polycarbonate resins and polyethylene phthalate polymers complying with 21 CFR 177.1580 and 177.1630, respectively.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2030 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0508

Rohm and Haas Co.; Filing for Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Rohm and Haas Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N*-methylglutarimide/acrylic copolymers as articles or components of articles intended for use in contact with food.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3979) has been filed by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, proposing that the food additive regulations be amended to provide for the safe use of *N*-methylglutarimide/acrylic copolymers as articles or components of articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2032 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Distribution of Awards; Fiscal Year 1987 Final Funding Preferences for Cooperative Agreements for Area Health Education Center Programs; Public Health Service

The Health Resources and Services Administration announces the final funding preferences which will be applied in the distribution of awards in Fiscal Year 1987 for Cooperative Agreements for Area Health Education Center (AHEC) Programs under the authority of section 781(a)(1) of the Public Health Service Act, as amended by Pub. L. 99-129.

Section 781(a)(1) authorizes Federal assistance to medical and osteopathic schools which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs. New applications submitted under this authority will be accepted from medical and osteopathic schools for the purpose of planning, developing and operating new area health education center programs. Applicants may request up to three years of support with the expectation that centers planned and developed in years one and two would be operational no later than the third year.

In making awards for Fiscal Year 1987, the following funding preferences are established:

(1) Competing continuation applications;

(2) Planning and development projects under section 781(a)(1); and

(3) Supplements to existing awards.

Additional proposed funding preferences were published in the **Federal Register** of November 24, 1986 (51 FR 42305) for public comment and no comments were received during the 30-day comment period.

Therefore, the final additional preferences are:

(1) Preference will be given to applications proposing Centers that serve health manpower shortage areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks and/or Hispanics, or low-income individuals.

An individual will be deemed to be of "low income" if that individual comes from a family with an annual income below a level based on low income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The following income figures determine what constitutes a low income family for purposes of the Area Health Education Centers Program for Fiscal Year 1987.

Size of family [1]	Level [2]
1	$7,200.00
2	9,400.00
3	11,100.00
4	14,300.00
5	16,800.00
6 or more	18,900.00

[1] Includes only dependents based on Federal income tax forms.

[2] Adjusted gross income for calendar year 1985, rounded to $100.

An application will be evaluated with respect to other approved applications to determine whether it has a "greater proportion" of the stated minority individuals.

(2) Preference will be given to applications proposing Centers located in primary care health manpower shortage areas designated under section 332 of the Public Health Service Act.

This program is not subject to the provisions of E.O. 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100.

Dated: January 27, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 87-2023 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

State of Organization, Functions, and Delegations of Authority: Food and Drug Administration

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 50 FR 16156, April 24, 1985) is amended to reflect the transfer of the quality assurance function from the Office of the Director (OD), National Center for Toxicological Research (NCTR) to the Office of Research Services (ORS), NCTR. When the Office of Research and ORS were established effective April 24, 1985, no decision could be made on the proper location of the quality assurance function and so that function remained in the OD, NCTR. The Director NCTR, now believes that those functions are most compatible with the activities of ORS and that management of the quality assurance activities will be most appropriaely conducted at the ORS level.

Section HF–B, Organization and Functions is amended as follows:

1. Delete subparagraph (q–1), Office of the Director (HFT1) and substitute the following:

(q–1) *Office of the Director (HFT1).* Provides leadership and direction to assure the efficient and effective planning, performance, and evaluation of Center activities.

Provides leadership and direction to all Center research activities.

Provides for scientific intelligence between the Center and all related interests in toxicological research, including the National Academy of Sciences, the National Science Foundation, and the worldwide academic, scientific, and medical communities consort; acts as principal liaison with the Director of the National Toxicology Program.

Coordinates Center programs with similar in-house, grant, and contract programs of the Food and Drug Administration, the Environmental Protection Agency, the National Institutes of Health, the National Toxicology Program, and other government toxicological research laboratories.

Monitors and evaluates performance of contractors supporting Center activities.

2. Delete subparagraph (q–5), Office of Research Services (HFTE) and substitute the following:

(q–5) *Office of Research Services* (HFTE). Organizes, plans, and directs Center research services programs in the areas of pathology, microbiology, diet preparation, animal husbandry, and analytical services.

Plans and coordinates the implemenation of research service programs in response to the Office of Research; directs pathology support services for the Center.

Performs research services relating to chemical and physicochemical behavior of test chemcials, integrity of dosage forms, and safe use and disposal of test chemicals.

Implements analytical methods to insure nutritional integrity and absence of deleterious substances in animal diets as they affect test results.

Develops, modifies, and validates microbial testing procedures which contribute to the assessment of toxic industrial chemicals, drugs, food additives, or naturally occurring and potentially toxic materials in the environment.

Directs and implements a microbiological surveillance program, providing quality assurance for all laboratory animal operations and toxicology experiments involving animal systems.

Establishes the requirements for analysis of diets used in toxicological evaluations and directs the operation of a diet preparation facility to support Center research.

Monitors the maintenance of an animal breeding facility to support research projects at the Center; directs animal care, barrier entry procedures, equipment and holding facilities, and data collection for animals in experiments.

Is responsible for the management of on-site Center service contracts in responsible program areas.

Establishes and conducts a quality assurance program to maintain the highest level of quality and integrity for all Center laboratory studies. Assures implementation of Departmental policies concerning performance and quality of research efforts.

Dated: January 22, 1987.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 87–2132 Filed 2–2–87; 8:45 am]

BILLING CODE 4160–01–M

Office of the Assistant Secretary for Health; Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory Council scheduled to meet during the month of February 1987:

Name: National Advisory Council on Health Care Technology Assessment.

Date and Time: February 26–27, 1987, 1:30 pm.

Place: Ritz Carlton Hotel, Ballroom and Carlton Room, 2100 Massachusetts Avenue Northwest, Washington, DC.

Closed February 27, 11:30 am to 12:00 Noon

Open for remainder of meeting.

Purpose

The Council is charged to provide advice to the Secretary and to the Director of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of the health care technology assessment functions prescribed by section 305 of the Public Health Service Act, as amended.

Agenda

The agenda for the open session will center on public policy aspects of medical coverage issues involving health care technology. During the closed session, the Council will be reviewing research grant applications relating to health care technology. These applications contain research protocols, design, raw research data, technical information, and preliminary research reports. The meeting involves discussion of salaries and the professional competence of applicants, information of a personal nature, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Ms. Nancy Blustein, National Center for Health Services Research and Health Care Technology Assessment, Room 1805, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, 20857, Telephone (301) 443–5652.

Agenda items are subject to change as priorities dictate.

Dated: January 21, 1987.

John E. Marshall,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 87-2131 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Grazing Administration, Exclusive of Alaska; Grazing Fee for the 1987 Grazing Year

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of the Grazing Fee for the 1987 Grazing Year.

SUMMARY: Notice is hereby given that the fee for grazing livestock on public lands administered by the Bureau of Land Management shall be $1.35 per animal unit month for the 1987 grazing year.

EFFECTIVE DATE: March 1, 1987 through February 28, 1988.

ADDRESS: Inquiries should be sent to: Director (220), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Billy R. Templeton (202) 653-9193.

SUPPLEMENTARY INFORMATION: Grazing fees for the use of public rangelands are established and collected annually under the authority of section 3 of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), and Executive Order No. 12548 of February 14, 1986. Bills to permittees and lessees shall be issued in accordance with the rate prescribed in this notice.

The legality of the fee formula under which the present grazing fee is calculated is being challenged in an action pending in the United States District Court for the Eastern District of California, *Natural Resources Defense Council, et al.* v. *Donald P. Hodel as Secretary of the United States Department of the Interior and Richard E. Lyng as Secretary of the United States Department of Agriculture* (Civ. No. CIV-S-86-0548 EJG EM).

J. Steven Griles,

Assistant Secretary of the Interior.

January 27, 1987.

[FR Doc. 87-2045 Filed 2-2-87; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[AK964-07-4213-15; AA-8103-39; AA-8103-42]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited for approximately 109 acres. The lands involved are within the following townships:

Kateel River Meridian

T. 19 S., R. 3 W.
T. 21 S., R. 4 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the FAIRBANKS DAILY NEWS-MINER. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 (907-271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 5, 1987, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file as appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Stanley Bronczyk,

Chief, Branch of Doyon Adjudication.

[FR Doc. 87-2021 Filed 2-2-87; 8:45 am]

BILLING CODE 4310-JA-M

[OR-010-07-4212-14: GP7-078; OR-39537]

Cancellation of Realty Action; Direct Sale of Public Land in Lake County, OR

The Notice of Realty Action, published in the **Federal Register** Document No. 86-8118, Volume 51, No. 70, pages 12572 and 12573, Friday, April 11, 1986, is hereby cancelled and the involved property withdrawn from public sale.

For additional information regarding this cancellation, contact the Bureau of Land Management, Lakeview District Office, P.O. Box 151, Lakeview, Oregon 97630.

Dated: January 23, 1987.

Jerry Asher,

District Manager.

[FR Doc. 87-2085 Filed 2-2-87; 8:45 am]

BILLING CODE 4310-33-M

[NV-030-07-4321-13]

Meeting of; Carson City District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Carson City District Advisory Council.

DATE: March 3, 1987; 9:00 a.m.

ADDRESS: BLM Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada.

SUPPLEMENTARY INFORMATION: The meeting agenda will include a review of earlier Council efforts on wild horse and burro issues and updates on current issues and concerns. The public is welcome to attend, and anyone may address the Council at 11:00 a.m.

FOR FURTHER INFORMATION CONTACT: Public Affairs Officer Steve Weiss, 1535 Hot Springs Road, Suite 300, Carson City, NV 89701, (702) 885-6134.

Dated: January 22, 1987.

James W. Elliott,

District Manager.

[FR Doc. 87-2086 Filed 2-2-87; 8:45 am]

BILLING CODE 4310-HC-M

Bureau of Reclamation

Functional Responsibilities and Central and Regional Office Locations

The affirmative disclosure provisions of the Freedom of Information Act (5 U.S.C. 552(a) (1) and (2)) require Federal agencies to publish current descriptions of their central and field organization, functional responsibilities, and locations where the public may obtain information. This notice is being published to comply with those disclosure requirements, and supersedes the portion of the notice pertaining to the Bureau of Reclamation which was published in the **Federal Register** on December 17, 1985 (50 FR 51463). Additional information about the Bureau of Reclamation may be obtained by referring to its official regulations as published in Title 43 of the Code of Federal Regulations.

Bureau of Reclamation

The Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*) authorized the Secretary of the Interior to locate, construct, operate, and maintain works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the Western States. To perform these functions, the Secretary in July 1902 established the Reclamation Service under the Geological Survey. In March 1907 the Reclamation Service was separated from the Survey, and in June 1923 the name was changed to Bureau of Reclamation. The name was changed to the Water and Power Resources Service in November 1979 by Secretarial Order No. 3042. The name was changed to Bureau of Reclamation in May 1981 by Secretarial Order No. 3064.

The basic objectives of the reclamation program are authorized by the act of 1902 and subsequent amendatory and supplemental acts to assist the States, local governments, and other Federal agencies to stabilize and stimulate local and regional economies, enhance and protect the environment, and improve the quality of life through development of water, other renewable resources, and related land resources throughout the 17 contiguous Western States.

Reclamation projects serve multiple purposes, including: Municipal and industrial water supply, hydroelectric power generation, irrigation water service, water quality improvement, wind power and solar power research, fish and wildlife enhancement, outdoor recreation, flood control, navigation, river regulation and control, and related activities authorized by Congress. Through contracts with project beneficiaries, the Bureau arranges for repayment to the Government of reimbursable project construction, operation, and maintenance costs. About 85 percent of all direct project costs are reimbursable. Interest is paid on costs allocated to power and to municipal and industrial water service.

Major reclamation functions include: investigation and development of plans for the regulation, conservation, and utilization of water and related resources, including basinwide water resource studies and development of new sources of fresh water supplies, power capacity, and energy; design and construction of authorized projects for which funds have been appropriated by the Congress; repair and rehabilitation of existing projects; operation and maintenance of Bureau-constructed facilities that are not transferred to local organizations; review of operation and maintenance of Bureau-built facilities that have been transferred to local governments; administration of the Small Reclamation Projects Act of 1956, and of loans for construction or rehabilitation of irrigation systems; and negotiation, execution, and administration of repayment contracts, and water-user operation and maintenance contracts. The Bureau of Reclamation has responsibility for the operation and maintenance of 53 hydroelectric powerplants and the construction of new hydroelectric facilities on its projects, as authorized by the Congress.

In cooperation with other agencies, the Bureau prepares and/or reviews environmental statements for proposed Federal water resource projects and renders technical assistance to foreign countries in water resource development and utilization.

Dated: January 21, 1987.

C. Dale Duvall,

Commissioner of Reclamation.

MAJOR OFFICES—BUREAU OF RECLAMATION

Office	Headquarters
Commissioner's Office.	Department of the Interior, C Street between 18th and 19th Streets, NW., Washington DC 20240. *Public Affairs Office:* (202) 343-4662.
Engineering and Research Center.	Bldg. 67, Denver Federal Center, P.O. Box 25007, Denver, Colorado 80225. *Mgmt. Operations Center:* (303) 236-3814.
Pacific Northwest Region.	Federal Bldg., U.S. Courthouse, Box 043, 550 W. Fort St., Boise, Idaho 83724. *Public Affairs Office:* (208) 334-1938.
Mid-Pacific Region.	Federal Office Bldg., 2800 Cottage Way, Sacramento, California 95825. *Public Affairs Office:* (916) 978-4919.
Lower Colorado Region.	P.O. Box 427, Nevada Highway and Park St., Boulder City, Nevada 89005. *Public Affairs Office:* (702) 293-8419.
Upper Colorado Region.	P.O. Box 11568, 125 S. State St., Salt Lake City, Utah 84147. *Public Affairs Office:* (801) 524-5403.
Southwest Region.	714 S. Tyler St., Amarillo, Texas 79101. *Public Affairs Office:* (806) 378-5437.
Missouri Basin Region.	P.O. Box 36900, Federal Office Bldg., 316 N. 26th St., Billings, Montana 59107. *Public Affairs Office:* (406) 657-6218.

[FR Doc. 87-2019 Filed 2-2-87; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 24, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by February 18, 1987.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Pitkin County

Aspen, *Bowles—Cooley House (Aspen MRA)*, 201 W. Francis St.
Aspen, *Callahan, Matthew, Log Cabin (Aspen MRA)*, 205 S. Third St.
Aspen, *Collins Block-Aspen Lumber and Supply (Aspen MRA)*, 204 S. Mill St.
Aspen, *Dixon—Markle House (Aspen MRA)*, 135 E. Cooper Ave.
Aspen, *Frantz, D.E., House (Aspen MRA)*, 333 W. Bleeker St.
Aspen, *Hallett, Samuel I., House (Aspen MRA)*, 432 W. Francis St.
Aspen, *Hynes, Thomas, House (Aspen MRA)*, 303 E. Main St.
Aspen, *La Fave Block (Aspen MRA)*, 405 S. Hunter St.
Aspen, *New Brick—The Brick Saloon (Aspen MRA)*, 420 E. Cooper Ave.
Aspen, *Riede's City Bakery (Aspen MRA)*, 413 E. Hyman Ave.
Aspen, *Shaw, Judge, House (Aspen MRA)*, 206 Lake Ave.
Aspen, *Shilling—Lamb House (Aspen MRA)*, 525 N. Fifth St.
Aspen, *Smuggler Mine (Aspen MRA)*, Smuggler Mountain
Aspen, *Waite, Davis, House (Aspen MRA)*, 234 W. Francis St.
Aspen, *Webber, Henry, House—Pioneer Park (Aspen MRA)*, 442 Bleeker St.

CONNECTICUT

Middlesex County

East Haddam, *Warner House*, 307 Town St.

FLORIDA

Nassau County

Fernandina Beach, *Fernandina Beach Historic District (Boundary Increase)*, Roughly bounded by Sixth, Broome, N. Third, & Escambia Sts.; Seventh & Date Sts., and Ash

Sarasota County

Sarasota, *Burns Realty Company—Karl Bickel House (Sarasota MRA)*, 101 N. Tamiami Trail
Sarasota, *El Vernona Hotel—John Ringling Hotel (Sarasota MRA)*, 111 N. Tamiami Trail

LOUISIANA

Caddo Parish

Shreveport, *Fairfield Historic District*, Fairfield Ave. and adjacent Sts. roughly bounded by Olive and Dalzell Sts., Line Ave. and Kings Hwy.
Shreveport, *Highland Historic District*, Roughly bounded by Vine, Gilbert, and Topeka Sts., and Irving Pl.

St. Landry Parish

Eunice, *Liberty Theatre*, 200 W. Park Ave.

MICHIGAN

Barry County

Hastings, *Shriner—Ketcham House*, 327 Shriner St.

Genesee County

Flint, *Johnson, Abner C., House*, 625 East St.

[FR Doc. 87–2148 Filed 2–2–87; 8:45 am]

BILLING CODE 4310–70–M

Alaska Region; Meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission

Summary: The Alaska Regional Office of the National Park Service announces a meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission. The following agenda items will be discussed:

1. Review of and finalize commission recommendations on trapping.
2. Review status of previous recommendations.
3. Rural determinations being made by the State of Alaska.
4. Eligibility for subsistence.
5. Consideration of other subsistence hunting proposals since last meeting.
6. NPS wilderness review process.
7. Status of general management plan and resource management plan.
8. Public comments.
9. Adjourn.

Information: The Wrangell-St. Elias National Park Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487.

Date: The meeting will be held at 1:00 p.m. on February 19 and continuing at 7:00 p.m. on February 19 and again at 9:00 a.m. on February 20.

Address: Wrangell-St. Elias National Park, Headquarters, Mile 105.5 Richardson Highway, Glennallen, Alaska.

Information: Richard Martin, Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 29, Glennallen, Alaska 99588 (907) 822–5234.

Boyd Evison,

Regional Director.

[FR Doc. 87–2011 Filed 2–2–87; 8:45 am]

BILLING CODE 4310–70–M

Concurrent Jurisdiction in Florida

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given that, effective October 27, 1986, concurrent jurisdiction was established over lands and waters administered by the National Park Service within the following units of the National Park System situated in the State of Florida.

Big Cypress National Preserve
Biscayne National Park
Canaveral National Seashore
Castillo de San Marcos National Monument
DeSoto National Memorial
Everglades National Park
Fort Caroline National Memorial
Fort Jefferson National Monument
Fort Matanzas National Monument
Gulf Islands National Seashore

Concurent jurisdiction was conveyed to the United States pursuant to Chapter 86–67, Laws of Florida, relinquished by the United States to the State of Florida pursuant to 40 U.S.C. 255, and accepted by Denis P. Galvin, Acting Director of the National Park Service, pursuant to applicable Federal statutory law. Cession and acceptance of concurrent jurisdiction was acknowledged by letter by the Honorable Bob Graham, Governor of the State of Florida, on October 27, 1986.

Dated: January 21, 1987.

Denis P. Galvin,

Acting Director, National Park Service.

[FR Doc. 87–2149 Filed 2–2–87; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Amendment No. 6]

National Motor Equipment Interchange-Agreement; Section 5a, Application No. 65 [1]

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Equipment Interchange Association (EIA) 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 and further information from EIA on its interpretations and application of specific rate bureau provisions. Copies of EIA's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC, 20423, and from EIA's representatives:

Roland Rice, John W. McFadden, Jr., 1600 Wilson Blvd., Suite 1301, Arlington, VA 22209

Kenneth R. Hauck, 1616 P Street NW., Washington, DC 20036

Additional information is in the Commission's decision. Copies may be purchased from TS InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call toll-free (800) 424–5403, or (202) 289–4357 in the Washington, DC, metropolitan area.

DATES: Responses from EIA are due March 20, 1987. Comments from interested parties are due 30 days thereafter. EIA may then reply within 30 days.

ADDRESS: An original and 10 copies, if possible, of comments referring to section 5a Application No. 65 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Jane Udovic (202) 275–7831
or
Louis E. Gitomer (202) 275–7691

SUPPLEMENTARY INFORMATION: Equipment Interchange Association (EIA) 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, EIA has been obliged to observe the requirements of the MCA and the standards in *Motor Carrier Rate Bureaus—Imp. Pub. L. 96–296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*).

EIA is not a typical rate bureau. It alleges that many of the new requirements should not apply to its operations, and its agreement does not contain many of the statutory safeguards. However, we have provisionally approved EIA's agreement as consistent with 49 U.S.C. 10706(b) and *Rate Bureau, Supra*, subject to discussion of the following subject areas: Identification and description of member carriers; right of independent action; employee docketing; open meetings; proxy voting; quorum standards; final disposition of cases; single-line rates; general rate increases or decreases; changes in tariff structure; and zone of rate freedom. EIA has been directed either to file a revised agreement conforming to the imposed

[1] Section 5 was recodified as section 10706.

conditions within 120 days of service of the decision, and indicate its intention to do so within 45 days, or to submit within 45 days further explanation as to why the conditions should not be imposed and why the section 10706 prohibitions do not apply. Interested parties will then have 30 days to comment. A copy of any comments filed with the Commission must also be served on EIA, which will have 30 days from the expiration of the comment period to reply.

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

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: January 23, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-2064 Filed 2-2-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 194]

CSX Transportation, Inc.; Notice of Findings on Abandonment in Dinwiddie County, VA

The Commission has issued a certificate authorizing CSX Transportation, Inc. to abandon its 23.11-mile rail line between South Collier (milepost S-24.89) and McKenney, VA (milepost S-48.00) in Dinwiddie County, VA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial 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 this Notice. The following notation shall 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.

Noreta R. McGee,

Secretary.

[FR Doc. 87-2222 Filed 2-2-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notification, Microelectronics and Computer Technology Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 (the "Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on December 23, 1986 disclosing changes in the membership of MCC and related information. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The notification identifying the original parties to the project, and the nature and objectives of that project, is published at 50 FR 2633 (January 17, 1985).

Effective November 13, 1986, Hewlett-Packard Company acquired the MCC share owned by BMC Industries Inc. On November 12, 1986, Sperry Corporation, a party to MCC, was merged into Burroughs Corporation. On November 13, 1986, Burroughs Corporation changed its name to Unisys Corporation.

Accordingly, Hewlett-Packard Company and each of its subsidiaries and Unisys Corporation and each of its subsidiaries are parties to MCC; BMC Industries, Inc. and each of its subsidiaries and Sperry Corporation and each of its subsidiaries are no longer parties to MCC.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-2041 Filed 2-2-87; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notification, Portland Cement Association

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. Specifically, Genstar Cement Company will be identified as Calaveras Cement Company, Genstar Cement Limited will be identified as Inland Cement Limited, and St. Marys Cement Limited's name has been changed to St. Marys Cement Corporation. Also, Falcon Cement Company has resigned from the Association effective October 31, 1986. Accordingly, at present members of the PCA are:

Aetna Cement Corp.
Alaska Basic Industries
Ash Grove Cement Co.
Ash Grove Cement West, Inc.
Blue Circle Atlantic
Blue Circle Inc.
CalMat Co.
Calaveras Cement Co.
Capitol Aggregates, Inc.
Dragon Products Co.
General Portland Inc.
Hawaiian Cement
Ideal Basic Industries, Cement Division
Canada Cement Lafarge Ltd.
Ciment Quebec, Inc.
Federal White Cement Ltd.
Inland Cement Ltd.
Independent Cement Corp.
Lehigh Portland Cement Co.
Lone Star-Faclon
Lone Star Industries, Inc.
Medusa Cement Co.
The Monarch Cement Co.
Moore McCormack Cement, Inc.
Northwestern States Portland Cement Co.
Rochester Portland Cement Corp.
St. Marys Peerless Cement Co.
St. Marys Wisconsin Cement Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Co.
Lake Ontario Cement Ltd.
North Star Cement Ltd.
St. Lawrence Cement Inc.
St. Marys Cement Corp.

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Baker-Dolomite (DBCA)
C-E Raymond
Holderbank Consulting Ltd.
Humboldt Wedag Company
Centennial Engineering, Inc.
Allis-Chalmers Corp.
F. L. Smidth and Co.
Claudius Peters, Inc.
Polysius Crop.
The Fuller Co.

The notifications were filed for the

purpose of involing the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The original notification, identifying the original parties to the venture and describing in general terms the area of planned activities of the venture, is published at 50 F.R. 5015 (1985).

Judy Whalley,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 87-2042 Filed 2-2-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 86-77]

Kasparian Pharmacy Ormond Beach, Fl; Hearing

Notice is hereby given that on September 19, 1986, the Drug Enforcement Administration, Department of Justice, issued to Kasparian Pharmacy, an Order To Show Cause as to why the Drug Enforcement Administration should not deny its application, executed on March 1, 1986, for registration as a retail pharmacy under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, February 10, 1987, in Courtroom VI, 3rd Floor, Old Courthouse Building, 300 NE First Avenue, Miami, Florida.

Dated: January 29, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-2096 Filed 2-2-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-97]

22nd Avenue Drugs, Inc. (t/a Acosta Pharmacy); Miami, Fl; Hearing

Notice is hereby given that on December 8, 1986, the Drug Enforcement Administration, Department of Justice, issued to 22nd Avenue Drugs, Inc., t/a Acosta Pharmacy, an Order To Show Cause as to why the Drug Enforcement Administration should not revoke the pharmacy's DEA Certificate of Registration, A90103692, and deny any pending application for renewal of such registration as a retail pharmacy.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Wednesday, February 11, 1987, in Courtroom VI, 3rd Floor, Old Courthouse Building, 300 NE First Avenue, Miami, Florida.

Dated: January 29, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-2097 Filed 2-2-87; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; of Application by Hoffmann-La Roche

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 7, 1986, Hoffmann-La Roche, Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Alphaprodine (9010)	II
Levorphanol (9220)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537. Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 5, 1987.

Dated: January 20, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-2020 Filed 2-2-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs,

Office of Management and Budget, Room 3208, Washington, DC 20503 (telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earlist possible date.

Revision

Employment and Training Administration
National Longitudinal Surveys—Survey of Work Experience of Mature Women
1205–0044; LGT 3141; 3143(L)
Annually; Biennially
Individuals or households
3,395 respondents; 2,139 hours; no forms

The Department of Labor will use this information to determine the employment and training needs and develop labor market policies designed to ease the employment and unemployment problems faced by women 50–64. These women were 30–44 years of age when this longitudinal survey began in 1967.

Revision

Employment and Training Administration
Program Monitoring Report and Job Service Complaint Form
1205–0039; ETA 8249
Recordkeeping
State or local governments
450 Recordkeepers; 5,400 hours; 1 form

Job Service forms are necessary as part of Federal Regulations at 20 CFR Parts 651, 653 and 658 published as a result of the NAACP vs. Brock suit. The forms allow us to track the services provided to MSFWs by SESAs.

Extension

Mine Safety and Health Administration
Ventilation Tests and Examinations in Underground Coal Mines
1219–0088
Daily; weekly
Businesses or other for profit; small businesses or organizations
2,007 respondents; 5,644,231 hours

Requires operators of underground coal mines to keep records of certain tests and examinations which are required to be performed to monitor the ventilation system.

Extension

Mine Safety and Health Administration
Records of Fire Drills and Programs to Instruct and Train, Miners in the Location and use of Firefighting Equipment
1219–0054
On occasion; quarterly
Businesses and other for profit; small businesses or organizations
2,207 respondents; 40,882 hours

Requires underground coal mine operators to have a plan approved by MSHA for the instruction of miners in firefighting and evacuation procedures to be followed in event of an emergency. The Standard also requires fire drills to be conducted quarterly to implement the plan and that a record be kept of the fire drills.

Extension

Mine Safety and Health Administration
Ventilation System and Methane and Dust Control Plan
1219–0084
On occasion; semi-annually
Businesses or other for profit; small businesses or organizations
2,207 respondents; 13,642 hours

Requires operators of underground coal mines to submit a detailed ventilation system and methane and dust control plan and revisions thereof to MSHA for approval.

Extension

Mine Safety and Health Administration
Escapeways and Escape Facilities
1219–0052
Weekly
Businesses or other for profit; small businesses or organizations
2,007 respondents; 150,124 hours

Requires that underground coal mine operators keep records of the results of weekly examinations of emergency escapeways.

Extension

Mine Safety and Health Administration
Ground Control Plan
1219–0026
On occasion
Businesses and other for profit; small businesses or organizations
410 respondents; 16,400 hours

Requires operators of surface coal mines to establish and follow a ground control plan which is consistent with prudent engineering design.

Extension

Occupational Safety and Health Administration
Respiratory Protection
1218–0099; OSHA 274
On occasion
Businesses or other for profit; Federal agencies or employees; small businesses or organizations
160,507 responses, 1,181,764 hours

This standard requires employers to collect information to ensure that employees who must wear respiratory protection devices are properly protected and issued the type of respirator appropriate to the hazard.

Signed at Washington, DC, this 27th day of January, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87–2091 Filed 2–2–87; 8:45 am]

BILLING CODE 4510–43–M

Employment and Training Administration

[TA–W–17,256 and TA–W–17,257]

C.F. Hathaway Co., Waterville, ME and C.F. Hathaway Co., Dover Foxcroft, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 15, 1986 applicable to all workers of the C.F. Hathaway Company in Waterville, Maine (TA–W–17,256 and C.F. Hathaway Company, Dover Foxcroft, Maine (TA–W–17,257). The Certification was published in the **Federal Register** on October 3, 1986 (51 FR 35442).

Based on new information furnished to the Department by the Amalgamated Clothing and Textile Workers Union and the company, the Department is terminating as of January 31, 1987 the certification for workers at the Waterville, Maine plant of C.F. Hathaway Company. The new information indicated only a few worker separations occurred at the Waterville, Maine plant and those were the result of seasonal factors.

The intent of the certification is to cover all workers of the C.F. Hathaway Company who were separated because of increased import competition of men's dress shirts. The amended notice applicable to TA–W–17,256 and 17,257 is hereby issued as follows:

"All workers of C.F. Hathaway Company, Waterville, Maine who became totally or partially separated from employment on or after February 18, 1985 and before January 31, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and all workers of C.F. Hathaway, Dover Foxcroft, Maine who became totally or partially separated on or after February 18, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 21st day of January, 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-2092 Filed 2-2-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18-064, et al.]

Cities Service Oil and Gas Corp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-18,064 Tulsa, Oklahoma; TA-W-18,064-A Oklahoma City, Oklahoma; TA-W-18,064-B Lindsay, Oklahoma; TA-W-18,064-C Houston, Texas; TA-W-18,064-D Midland, Texas; TA-W-18,064-E Bridgeport, Texas; TA-W-18,064-F Robstown, Texas; TA-W-18,064-G West Seminole, Texas; TA-W-18,064-H Odessa, Texas; TA-W-18,064-I Pratt, Kansas; TA-W-18,064-J El Dorado, Kansas; TA-W-18,064-K Bakersfield, California; TA-W-18,064-L Ingleside, California; TA-W-18,064-M Denver, Colorado; TA-W-18,064-N Jackson, Mississippi; TA-W-18,064-O Anchorage, Alaska; TA-W-18,064-P Charleston, South Carolina; TA-W-18,064-Q Niagara Falls, New York; TA-W-18,064-R Gillette, Wyoming; TA-W-18,064-S Lake Charles, Louisiana; TA-W-18,064-T Hobbs, New Mexico.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 19, 1986 applicable to all workers of the Exploration and Production of Division of Cities Service Oil and Gas Corporation, Tulsa, Oklahoma. The Certification was published in the **Federal Register** on January 9, 1987 (52 FR 874).

Based on new information furnished to the Department, the notice is amended to properly reflect the correct worker group by eliminating the Exploration and Production Division in the title of the notice. Cities Service is an exploration and production company for crude oil and natural gas. The company has oil and gas fields in several states as well as offices which support crude oil production. Worker separations have occurred at locations in several different states.

The intent of the certification is to cover all workers of Cities Service Oil and Gas Corporation in Tulsa, Oklahoma; Oklahoma City, Oklahoma; Lindsay, Oklahoma; Houston, Texas; Midland, Texas; Bridgeport, Texas; Robstown, Texas; West Seminole, Texas; Odessa, Texas; Pratt, Kansas; El Dorado, Kansas; Bakersfield, California; Ingleside, California; Denver, Colorado; Jackson, Mississippi; Anchorage, Alaska; Charleston, South Carolina; Niagara Falls, New York; Hobbs, New Mexico; Gillette, Wyoming and Lake Charles, Louisiana. The amended notice applicable to TA-W-18,064 is hereby issued as follows:

All workers of Cities Service Oil and Gas Corporation in Tulsa, Oklahoma; Oklahoma City, Oklahoma; Lindsay, Oklahoma; Houston, Texas; Midland, Texas; Bridgeport, Texas; Robstown, Texas; West Seminole, Texas; Odessa, Texas; Pratt, Kansas; El Dorado, Kansas; Bakersfield, California; Ingleside, California; Denver, Colorado; Jackson, Mississippi; Anchorage, Alaska; Charleston, South Carolina; Niagara Falls, New York; Hobbs, New Mexico; Gillette, Wyoming and Lake Charles, Louisiana who became totally or partially separated from employment on or after August 29, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of January 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-2093 Filed 2-2-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,560]

Murray Ohio Manufacturing Co., Lawrenceburg, TN; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 10, 1986 in response to a worker petition received on October 30, 1986 which was filed on behalf of workers at Murray Ohio Manufacturing Company, Lawrenceburg, Tennessee.

An active certification covering the petitioning group of workers remains in effect (TA-W-15,451). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 24th day of December 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-2094 Filed 2-2-87; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 13, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 13, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC, 20213.

Signed at Washington, DC this 12th day of January 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Marvin E. Boyer Oil Co. (Company)	Iola, KS	1/5/87	12/16/86	TA-W-18,870	Crude oil.
Learnco Service (Workers)	Midland, TX	1/5/87	12/17/86	TA-W-18,871	Plastic bearings.
Stelman Mfg. Co. (ILGU)	Wilkes-Barre, PA	1/5/87	12/8/86	TA-W-18,872	Ladies' blouses.
Modern Industrial Plastics Div. The Duriron Co. (USWA)	Dayton, OH	1/5/87	12/19/86	TA-W-18,873	Plastic industrial seals.
Anwelt Corporation (Workers)	Fitchburg, MA	1/5/87	12/12/86	TA-W-18,874	Leather work boots.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Lettisse, Inc. (Company)	Reading, PA	1/5/87	12/9/86	TA-W-18,875	Ladies' handbags & belts.
Cycla Industries (Workers)	Sanford, ME	1/5/87	12/12/86	TA-W-18,876	Leather footwear.
Muskegon Piston Ring Co., Inc. (UAW)	Muskegon, MI	1/5/87	12/7/86	TA-W-18,877	Piston rings.
HPM Corporation (IAMAW)	Mt. Gilead, OH	1/5/87	12/15/86	TA-W-18,878	Plastic mfg machinery.
Santa Clara Plastics (Workers)	Boise, ID	1/12/87	12/16/86	TA-W-18,879	Capital equipment for microchip processing.
Campo Industries, Inc. (Workers)	Lowell, MA (Rogers)	1/12/87	12/18/86	TA-W-18,880	Fabric for shoes.
Do	Lowell, MA (Middlesex)	1/12/87	12/18/86	TA-W-18,881	Fabric for shoes.
Olga Coal Company (UMWA)	Coalwood, WV	1/12/87	12/26/86	TA-W-18,882	Metalurgic coal.
Cooper Industry (Workers)	Hartford, CT	1/12/87	12/22/86	TA-W-18,883	Electrical light switches, outlets and relays.
C.B.I. Services, Inc. (Boilermakers)	Salt Lake City, UT	1/12/87	12/20/86	TA-W-18,884	Storage vessels, steel fabrication.
Kelly-Springfield Tire Co. (URW)	Cumberland, MD	1/12/87	1/2/87	TA-W-18,885	Tires for passenger cars and light trucks.
BHP Petroleum (Americas) (Workers)	Oklahoma City, OK	1/12/87	12/24/86	TA-W-18,886	Crude oil.
National Supply Co. (USW)	Gainesville, TX	1/12/87	12/24/86	TA-W-18,887	Oilfield equipment.
United Technical Associates, Inc. (Company)	Allentown, PA	1/12/87	12/26/86	TA-W-18,888	Designed and drafting service.
Umetco Minerals Corp. (Workers)	Blanding, UT	1/12/87	1/2/87	TA-W-18,889	Uranium and vanadium.
Spears & Jackson, Inc. (IAMAW)	Eugene, OR	1/12/87	12/18/86	TA-W-18,890	Bandsaws and circular saws.
Flooting Point Systems Inc. (Workers)	Beaverton, OR	1/12/87	12/19/86	TA-W-18,891	Array processors.
Bessemer and Lake Erie Railroad Co. (Workers)	Monroeville, PA	1/12/87	12/22/86	TA-W-18,892	Transport service (freight).
Mitchel Energy & Development Corp. (MEDC) (Company)	Washington, DC	1/12/87	12/24/86	TA-W-18,893	Oil and gas exploration and production.
Do	Bridgeport, TX	1/12/87	12/24/86	TA-W-18,894	Do.
Do	Spring, TX	1/12/87	12/24/86	TA-W-18,895	Do.
Do	The Woodlands, TX	1/12/87	12/24/86	TA-W-18,896	Do.
Do	Denver, CO	1/12/87	12/24/86	TA-W-18,897	Do.
Do	New Orleans, LA	1/12/87	12/24/86	TA-W-18,898	Do.
Do	Columbus, OH	1/12/87	12/24/86	TA-W-18,899	Do.
Do	Oklahoma City, OK	1/12/87	12/24/86	TA-W-18,900	Do.
Do	Conneautville, PA	1/12/87	12/24/86	TA-W-18,901	Do.
Do	Bridgeport, TX	1/12/87	12/24/86	TA-W-18,902	Do.
Do	Decatur, TX	1/12/87	12/24/86	TA-W-18,903	Do.
Do	Ft. Worth, TX	1/12/87	12/24/86	TA-W-18,904	Do.
Do	Galveston, TX	1/12/87	12/24/86	TA-W-18,905	Do.
Do	Ganado, TX	1/12/87	12/24/86	TA-W-18,906	Do.
Do	Houston, TX	1/12/87	12/24/86	TA-W-18,907	Do.
Do	Jacksboro, TX	1/12/87	12/24/86	TA-W-18,908	Do.
Do	Livingston, TX	1/12/87	12/24/86	TA-W-18,909	Do.
Do	Mineral Wells, TX	1/12/87	12/24/86	TA-W-18,910	Do.
Do	Sonora, TX	1/12/87	12/24/86	TA-W-18,911	Do.
Do	Thornton, TX	1/12/87	12/24/86	TA-W-18,912	Do.
Do	Douglas, WY	1/12/87	12/24/86	TA-W-18,913	Do.
MND Drilling Corp. (MEDC) Northern Div. (Company)	Bridgeport, TX	1/12/87	12/24/86	TA-W-18,914	Do.
Do	Magnolia TX	1/12/87	12/24/86	TA-W-18,915	Do.
Oilworld Supply Co. (MEDC) (Company)	Houston, TX	1/12/87	12/24/86	TA-W-18,916	Do.
Do	Bridgeport, TX	1/12/87	12/24/86	TA-W-18,917	Do.
Ferguson Crossing Pipe Line Co. (MEDC) (Company	Lyons, TX	1/12/87	12/24/86	TA-W-18,918	Do.
Do	San Antonio, TX	1/12/87	12/24/86	TA-W-18,919	Do.
South Cen-Tex Gas Co. (MEDC) (Company)	....do	1/12/87	12/24/86	TA-W-18,920	Do.
Southwestern Gas Pipeline, Inc. (MEDC)	Mineral Wells, TX	1/12/87	12/24/86	TA-W-18,921	Do.
Do	San Antonio, TX	1/12/87	12/24/86	TA-W-18,922	Do.
Winnie Pipeline, Co. (MEDC) (Company)	Winnie, TX	1/12/87	12/24/86	TA-W-18,923	Do.
Liquid Energy Corp. (MEDC) (Company)	Roswell, NM	1/12/87	12/24/86	TA-W-18,924	Do.
Do	Bridgeport, TX	1/12/87	12/24/86	TA-W-18,925	Do.
Do	Bryan, TX	1/12/87	12/24/86	TA-W-18,926	Do.
Do	Cisco, TX	1/12/87	12/24/86	TA-W-18,927	Do.
Do	Dumas, TX	1/12/87	12/24/86	TA-W-18,928	Do.
Do	Leggett, TX	1/12/87	12/24/86	TA-W-18,929	Do.
Do	Mineral Wells, TX	1/12/87	12/24/86	TA-W-18,930	Do.
Do	Rising Star, TX	1/12/87	12/24/86	TA-W-18,931	Do.
Do	Rochdale, TX	1/12/87	12/24/86	TA-W-18,932	Do.
Do	Stinnett, TX	1/12/87	12/24/86	TA-W-18,933	Do.
Billy The Kid Industries (ACTWU)	El Paso, TX	1/5/87	12/11/86	TA-W-18,934	Men's and boys' pants.
Link-Belt Construction (Workers)	Lexington, KY	1/5/87	12/19/86	TA-W-18,935	Heavy construction equipment.
Farah Manufacturing Co. (ACTWU)	El Paso, TX	1/5/87	12/11/86	TA-W-18,936	Men's and ladies' sportswear.
Interstate Diesel Inc. (Workers)	North Lawrence, OH	1/12/87	12/29/86	TA-W-18,937	Fuel injector nozzel assemblies.
Textronic, Inc. (Workers)	Beaverton, OR	1/12/87	12/22/86	TA-W-18,938	Integrated circuits.
Asea Robotics (Workers)	New Berlin, WI	1/12/87	12/15/86	TA-W-18,939	Industrial robotics.
Rival Mfg. Co. (Workers)	Albany, MO	1/12/87	12/19/86	TA-W-18,940	Small kitchen appliances.
Minitore Precision Components (Workers)	Walworth, IN	1/12/87	12/19/86	TA-W-18,941	Check valves & vacuum emission harnesses.
Gerald Mills (Workers)	Hazelton, PA	1/12/87	12/23/86	TA-W-18,942	Women's blouses.
Ideal of Scotty's Fashions (ILGWU)	Pen Argyl, PA	1/12/87	12/22/86	TA-W-18,943	Ladies pants and skirts.
General Castings Corp. (USWA)	Waukesha, WI	1/12/87	12/23/86	TA-W-18,944	Iron castings.
Lauson Engine Div. of Tecumseh Products (IAMAW)	New Holstein, WI	1/12/87	12/23/86	TA-W-18,945	Engines for lawn & garden.
B&B Manufacturing Co. Inc. (ILGWU)	Trenton, NJ	1/5/87	12/19/87	TA-W-18,946	Sportswear (shirts, blouses).
Cardinal Drilling, Co. (Workers)	Billings, MT	1/12/87	12/16/86	TA-W-18,947	Oil and gas drilling.
J&D L.P. Service (Company)	Dickinson, ND	1/12/87	12/16/86	TA-W-18,948	Delivers oil products.
Prairie Oil Co. (Company)	Dickinson, ND	1/12/87	12/16/86	TA-W-18,949	Do.
Prairie Truck Center (Company)	Dickinson, ND	1/12/87	12/16/86	TA-W-18,950	Do.
J&D Inc. (Company)	Dickinson, ND	1/12/87	12/16/86	TA-W-18,951	Do.
H.D. Lee Company (UGWA)	Ottawa, KS	1/12/87	14/16/86	TA-W-18,952	Men's and women's denim products.
McEvoy-Willis (Workers)	Tyler, TX	1/12/87	12/31/86	TA-W-18,953	Oil field equipment.
The Anschutz Corp. (Company)	Denver, CO	1/12/87	1/2/87	TA-W-18,954	Oil and gas exploration and production.
Do	Midland, TX	1/12/87	1/2/87	TA-W-18,955	Do.
Rose & Sons, Inc. (Workers)	Midland, TX	1/12/87	12/22/86	TA-W-18,956	General contractor.
Tri Valley Growers, Plant M (Teamsters)	Merced, CA	1/12/87	12/16/86	TA-W-18,957	Canned peaches.
Gaffney, Cline & Associates Inc. (Company)	Dallas, TX	1/12/87	12/10/86	TA-W-18,958	Financial services to oil industry.
Stone & Webster Oil Co. (Workers)	Houston, TX	1/12/87	12/20/86	TA-W-18,959	Oil and gas drilling and exploration.
Natco (Company)	Electra, TX	1/12/87	12/15/86	TA-W-18,960	Oil and gas processing equipment.
Kaneb Operating Co. Ltd. (Workers)	Midland, TX	1/12/87	12/17/86	TA-W-18,961	Oil and gas.
Emerald Services, Inc. (Workers)	Titusville, PA	1/12/87	1/5/87	TA-W-18,962	Crude oil.
Alliance Drop Forge Co. (Workers)	Alliance, OH	1/12/87	1/3/87	TA-W-18,963	Commercial forgings.
W.B. Hinton Drilling Co. (Workers)	Mt. Pleasant, TX	1/12/87	11/22/86	TA-W-18,964	Drilling oil wells.
Crystal Springs Oil Inc. (Workers)	Seneca, PA	1/12/87	11/24/86	TA-W-18,965	Crude Oil.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Viking Glass Company (AFGWU)	New Martinsville, WV	1/12/87	12/30/86	TA-W-18,966	Glass tableware.

[FR Doc. 87-2095 Filed 2-2-87; 8:45 am]
BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

Application for Class Exemption Relating to Certain Employee Benefit Plan Foreign Exchange Transactions

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: On September 15, 1986 (51 FR 32695), the U.S. Department of Labor published a notice requesting comments on issues which the Department is considering in deciding whether to propose a class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from the taxes imposed by the Internal Revenue Code for foreign exchange transactions effected between employee benefit plans and certain banks and their affiliates. The notice established a comment closing date of January 15, 1987.

In response to requests from the public, the Department is extending the comment period for 40 days from the original comment closing date.

DATE: The comment period has been extended to February 24, 1987.

Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except to comments received on or before this date.

ADDRESS: Comments should be addressed to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5669, U.S. Department of Labor, Washington, DC 20210. Attention: Foreign Exchange Class Exemption Application. All comments received will be available for public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rudy Nuissl, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523-8671. [This is not a toll-free number.]

Dated: January 19, 1986.

Alan D. Lebowitz,

Director of Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-2151 Filed 2-2-87; 8:45 am]
BILLING CODE 4510-29-M

[Application No. D-6397, et al.]

Proposed Exemptions; IBI, Inc. Profit Sharing Plan, et. al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room, N-4677, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on life with the Department for a complete statement of the facts and representations.

IBI, Inc. Profit Sharing Plan and Trust Agreement (Profit Sharing Plan) and IBI, Inc. and Top Home Center, Inc. Defined Benefit Pension Plan and Trust (the Pension Plan; collectively, the Plans) Located in Hastings, MN

[Application Nos. D-6397 and D-6398]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, for a period of 5 years, to the proposed sales by IBI, Inc. (IBI) of contracts for deed to the Plans, nor to the guarantee of repayment by

certain shareholders of IBI, provided that the terms and conditions of such sales are at least as favorable to the Plans as those which the Plans could receive in similar transactions with unrelated parties.

Summary of Facts and Representations

1. The Plans are a pension plan and a profit sharing plan with the pension plan having 4 participants and the profit sharing plan 24 participants. As of June 30, 1985, the Pension Plan had net assets of $376,172 and the Profit Sharing Plan had net assets of $780,828. IBI, the Plans' sponsor, operates a building supply company (Top Home Center) and also is in the business of constructing condominiums.

2. IBI purchases undeveloped real estate, sub-divides the same, constructs condominiums on the real estate and obtains mortgages thereon. IBI then sells the condominium units to purchasers under a contract for deed. A contract for deed is a contract whereby the owner in fee simple absolute (the Vendor), or the Vendor's assignee agrees by contract to convey to the buyer (Vendee) by a warranty deed, accompanied by an abstract of title or torrens certificate showing good and marketable title in the Vendor, the fee simple title to the premises upon payment by the Vendee of the principal and interest due from the Vendee to the Vendor under the contract for deed.

3. IBI is requesting an exemption to allow it to sell the above described contracts for deed (the Contractors) to the Plans for a 5 year period. The Contracts being sold to the Plans will represent a first lien on such properties and will be recorded as such. IBI will sell the Contracts to the Plans on an equal basis for a cash purchase price of the lessor of IBI's cost or the market value of the Contracts on the date of sale. If IBI receives any premium or additional consideration in connection with such Contracts, such premium shall be passed along to the Plans. IBI will receive no financial benefit from any Contract sold to the Plans.

4. The Contracts that IBI is proposing to sell to the Plans are not seasoned in the sense that they have been in existence for any period of time. The proposed transactions involve only new construction for IBI. In making residential loans and reviewing residential loan applications, IBI will follow the Federal National Market Association (FNMA) guidelines. The factors influencing acceptability will include the credit record and financial statements of the loan applicant, the ratio between expenses to be assumed as a result of the loan and the stabilized income of the applicant, verification of employment, the value of the security and the ratio of the loan sought to the value of the security.

5. The Plans will not purchase any Contract where the loan to value ratio exceeds 75%, nor purchase any Contract which upon its purchase would put the value of all Contracts owned by said Plan at 25% or more of the current value of the Plan's assets. No more than 10% of the assets of either Plan will be invested in any one Contract and the Plans will not purchase more than one Cabinet from any mortgagor or Vendee. All Contracts purchased by either Plan will meet all FNMA underwriting criteria. Also, there will be an appraisal of the underlying security by an FNMA approved independent appraiser prior to any purchase of a Contract by either Plan. In addition, the purchaser of the property will be required to maintain casualty insurance on the property subject to the Contract at all times during the term of the Contract. In addition, no Contract will be purchased by the Plans in which the annual return is less than 12%. IBI will service the Contracts at no cost to the Plans.

6. IBI and Robert J. Swanson, Donald W. Gustafson, Paul W. Lawrence and Samuel H. Hertogs (the Shareholders) jointly and severally guarantee as follows:

(1) To repurchase, at full face value, without discount, any Contract not refinanced or otherwise fully paid off within 90 days of its maturity. If IBI has not performed and purchased the Contract within said 90 days, the Shareholders shall do so within 10 days thereafter.

(b) To repurchase at full fact value without any discount, any Contract more than 3 months delinquent in payments at any time during the life of the Contract and prior to maturity. If IBI has not performed and purchased the Contract within 10 days of the Contract being 3 months in arrears, the Shareholders shall do so within 10 days thereafter.

7. Prior to any purchase of a Contract by either Plan a party unrelated to the Plans and IBI, Mr. John Poepl (Mr. Poepl), President of Vermillion State Bank of Vermillion, Minnesota will determine whether each such transaction is a suitable investment for the Plans and that the terms of the proposed transaction are at least as favorable to the Plans as those which the Plans could have received in the same type of transaction with an unrelated third party. Mr. Poepl will also supervise the servicing of all transactions by IBI.

In making the decision whether to purchase a particular Contract, Mr. Poepl will take into account the following factors:

(a) An appropriate rate of return to the Plans based on other comparable investments available to the Plans. Considerations include safety of the investment, period required to amortize the investment and returns being realized by the Vermillion State Bank on its commercial installment loans.

(b) The Contracts are secured and guaranteed by the property, the Vendee, IBI and the Shareholders.

(c) No more than 25% of each Plan's assets will be invested in Contracts.

Mr. Poepl represents that he will monitor and enforce the terms and conditions of the Contracts including the guarantees. In the event of default, Mr. Poepl will establish the fair market value of the Contract to be sold to IBI or the Shareholders.

8. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plans' trustees represent that the proposed transactions are in the best interests of the participants and beneficiaries of the Plans;

(b) The proposed transactions will be approved and monitored by Mr. Poepl;

(c) The exemption will be a temporary exemption for 5 years;

(d) The Plans will receive both corporate and personal guarantees; and

(e) No more than 25% of each Plan's assets will be invested in the Contracts.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted will expire 5 years after the date of grant. Subsequent to the expiration of this exemption, the Plans may continue to hold Contracts originated during this 5 year period until repaid. Should the applicant wish to continue selling Contracts to the Plans beyond the 5 year period, the applicant may submit another application for exemption.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Maurice S. Rawlings, M.D., P.C. Defined Benefit Plan and Trust (the Plan) Located in Chattanooga, TN

[Application No. D-6688]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the

Code [1] and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of a parcel of real property and the improvements thereon to the Georgia Winery, Inc. (Georgia Winery), a disqualified person with respect to the Plan, provided the Plan receives no less than fair market value for the property at the time of sale.

Summary of Facts and Representations

1. Maurice S. Rawlings (Rawlings) is the sole shareholder and the only employee of Maurice S. Rawlings, M.D., P.C. (the Corporation). Rawlings is also the president of the Corporation and the sole participant in the Plan. The Plan is a defined benefit plan which had total assets of approximately $400,000 as of June 30, 1985. If other employees become eligible to participate, a new, nondiscriminatory plan will be established. Rawlings has made all the decisions in regard to investments of the Plan, acting on the advice of various financial advisors and stockbrokers.

2. In November 1985, the Plan purchased a parcel of unimproved real property located in Catoosa County, Georgia. The real property was purchased for $60,000 in cash from a party unrelated to the Plan. The total cost to the Plan of acquiring the property, including closing costs, amounted to $60,103. Subsequently, Plan assets amounting to approximately $48,300 were used for the purpose of constructing a small commercial building on the property. At the time of construction, it was the intention that upon completion the building would be used as a retail store by Georgia Winery, a corporation wholly-owned by Rawlings which recently has been duly organized under the laws of the State of Georgia.[2]

3. An appraisal was made on the parcel of real property on March 19, 1986, by James C. Glascock (Glascock), a realtor located in Chattanooga, Tennessee. The Plan paid $500 for the appraisal. The applicant represents that Glascock is independent of the Plan and Rawlings. The property is situated approximately 12 miles south of the downtown section of Chattanooga. Glascock states that the highest and best use of the 8.1 acres of land constituting the subject property would be some form of commerce on that part of the property which is not steeply rolling woodland. The building on the property, which was about 60 percent complete at the time of the appraisal, is constructed of steel frame and metal panel siding, with a mansard style roof. Placing emphasis on the comparable sales approach to value, Glascock estimated that, upon completion of the building, the property with improvements would have a fair market value of $65,400.

4. The real property has produced no income for the Plan since the time of purchase. The applicant proposes that the Plan sell the property to Georgia Winery. The Plan will sell the property for cash and will pay no commissions, fees or other expenses in connection with the proposed sale. The price paid by Georgia Winery will be the greater of: (1) Fair market value for the property, as improved, at the time of sale, based on an updated independent appraisal, or (2) the total cost to the Plan of acquiring and holding the real property and constructing the improvements thereon. In addition, Georgia Winery will make a payment to the Plan to compensate the Plan for the use of its funds to construct improvements on the property. The payment will equal $48,300 multiplied by the number of days the funds were so used times the federal short-term interest rate as defined in Code section 1274(d), all divided by 365. The sale of the property will enable the Plan to invest the cash proceeds in assets which are more liquid and produce income for the Plan.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 4975(c)(2) of the Code because: (1) The sale of the real property will be entirely for cash and the Plan will pay no commissions or other expenses in regard to the sale; (2) Georgia Winery will pay either fair market value for the property, as improved, or the total cost to the Plan of acquiring, holding and improving the property, whichever is higher; (3) the cash realized from the sale will be reinvested in assets which are more liquid and produce income for the Plan; and (4) because Rawlings is the only participant in the Plan, the transaction will affect only Rawlings.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Allen-Tamarak, Inc. Profit Sharing Plan (the Profit Sharing Plan) and the Allen-Tamarak, Inc. Money Purchase Pension Plan (the Pension Plan; collectively, the Plans) Located in San Francisco, CA

[Application Nos. D–6700 and D–6701]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4875(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to a loan (the Loan) of $75,000 by the individual accounts (the Accounts) in the plans of Mr. Francis F. Allen (Mr. Allen) to Bermuda Research Corporation (BRC), a party in interest with respect to the Plans, provided the terms of the Loan are at least as favorable to the Plans as those obtainable in an arms's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans, which are sponsored by Allen-Tamarak, Inc. (ATI), a business consulting firm formerly located in San Francisco, California, consist of the Profit Sharing Plan and the Pension Plan. The Plans provide for participant-directed investments. They share two common participants, Mr. Allen and Ms. Mary A. Fay (Ms. Fay), who are unrelated. As of September 30, 1985, the Profit Sharing Plan has net assets of $318,964 and Mr. Allen had an Account balance in the Profit Sharing Plan of $257,026. Also as of September 30, 1985, the Pension Plan had net assets of $231,092 and Mr. Allen had an Account balance in the Pension Plan of $181,985. Since November 22, 1983, the Plans have been inactive due to the liquidation of ATI.

2. BRC is a California corporation maintaining its principal place of business in Orinda, Contra Costa County, California. BRC owns and manages certain parcels of real property in several states. BRC also owns the patent on and manufactures a garden

[1] Because Maurice S. Rawlings is the sole shareholder of the Employer and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

[2] The applicant recognizes that the use of Plan assets to construct an improvement on the property may have constituted a prohibited transaction under section 4975(c)(1) of the Code. Accordingly, the applicant will pay the Internal Revenue Service all excise taxes that are applicable under section 4975(a) of the Code within 90 days of the publication in the **Federal Register** of the grant of this proposed exemption.

tool known as the "Whirlybird" spreader. Mr. Allen and Ms. Fay serve as officers and directors of BRC. Mr. Allen is the sole shareholder of BRC and the former principal shareholder of ATI.

3. An exemption is requested to allow Mr. Allen's Accounts in the Plans to lend $75,000 to BRC. Mr. Allen's Account in the Profit Sharing Plan will contribute $45,000; his Account in the Pension Plan will contribute $30,000. The Loan proceeds will be used by BRC to provide additional operating capital.

4. The Loan will have a duration of ten years. It will be repaid in annual principal installments of $7,500 plus quarterly interest payments on the unpaid prinicipal balance. The Loan will carry a fixed rate of interest. Westamerica Bank (Westamerica) of San Rafael, California, an unrelated entity, has indicated it would charge BRC interest at the rate of 10.125 percent per annum for a comparable loan. In addition, Westamerica says it would charge BRC an upfront loan fee of $2,250.

On the basis of the foregoing, the interest rate for the proposed Loan will be 10.425 percent per annum. This interest rate has been determined by adding to the original interest rate of 10.125 percent per annum, as established by Westamerica, the figure .3 percent, representing the $2,250 upfront loan fee amortized over ten years.

5. The Loan will be evidenced by a promissory note and it will be secured by a first deed of trust on a condominium (the Real Property) located at 4969 Desert Vista Terrace, Borrego Springs, California. The Real Property is currently being leased for one year to Di Giorgio Corporation, an unrelated entity, for an annual rental of $18,000. A portion of the rental income generated from the Real Property will be utilized to amortize the Loan.

The deed of trust evidencing the interests in the Real Property of Mr. Allen's Accounts in the Profit Sharing and Pension Plans will be recorded. In addition, BRC will maintain, at its own expense, adequate insurance against fire or other casualty loss to the Real Property. BRC will also name the Plans as addtional named insureds of such insurance.

6. The Real Property was valued by Mr. Gregory F. Hansen, SRA, an indepeendent appraiser affiliated with G.F. Hansen and Associates, Inc. of San Diego, California. In an appraisal report dated March 8, 1986, Mr. Hansen placed the fair market value of the Real Property at $161,000.

7. At all times, the value of the Real Property securing the Loan will represent 150 percent of the outstanding balance of the Loan. If the value of the Real Property declines during the term of the Loan to an amount which is below the 150 percent level, additional collateral will be pledged.

8. In summary it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of th Act because: (a) The Loan will represent less than 25 percent of the total assets of Mr. Allen's Accounts in the Plans; (b) The Loan will be secured by a first deed of trust on the Real Property which has a fair market value in excess of 150 percent of the outstanding Loan balance; (c) Additional collateral for the Loan will be provided should the fair market value of the Real Property fall below 150 percent of the outstanding balance of the Loan; (d) the Loan is based on terms that are similar to those required by Westamerica; and (e) the only accounts in the Plans that will be affected by the Loan will be those of Mr. Allen.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

Maryville-Alcoa Newspapers, Inc. Profit Sharing Plan (the Plan) Located in Maryville, Tennessee

[Application No. D-6765]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of a certain parcel of real property (the Property) by the Plan to Tutt S. Bradford (Mr. Bradford), a party in interest with respect to the Plan, provided that the consideration paid for the Property is not less than the greater of either the sum of $75,000 or the fair market value of the Property on the date of the Sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 14 participants and total assets of $273,144.12 as of October 31, 1986. The assets consisted of the Property, stocks, bonds, cash, and cash equivalents.

On October 10, 1962, the Plan was established by Maryville Alcoa Newspapers, Inc. (the Employer) for the benefit of its employees. A defined benefit plan was established on September 22, 1970, by the Employer, at which time contributions to the Plan were discontinued and all participants became fully vested in their respective account balances. The latest favorable determination letter for the Plan was issued by the Internal Revenue Service on September 30, 1985. Mr. Bradford and Jerome Moon (Mr. Moon) are the trustees and administrators for the Plan.

2. The employer is a Tennessee corporation that publishes and distributes a daily newspaper for the cities of Maryville, and Alcoa, Tennessee and for Blount County, Tennessee. Mr. Bradford is the Chairman of the Board of the Employer and Mr. Moon, who is a son-in-law of Mr. Bradford, is its President and Publisher. Mr. Bradford's wife is the Treasurer of the Employer and Mr. Bradford's two daughters are the Secretary and Vice-President, respectively.

The entire legal and/or beneficial ownership of the preferred stock and the common stock of the Employer, except for 1,000 shares of preferred stock held by Maryville College, is separately held by or for Mr. Bradford his wife, and their two daughters and grandchildren.

3. Mr. Bradford proposes to purchase the Property from the Plan for a cash amount that will be the greater of either the sum of $75,000 or the fair market value of the Property on the date of the Sale. No expenses for the Sale will be incurred by the Plan.

The Property is located at 307 E. Harper Street in Maryville, Tennessee. It is one part of a larger three-part parcel of real property consisting of land and a portion of a building on which the Employer's business is conducted. A second part of this overall parcel is owned by the Employer and the third part is owned by Mr. Bradford's daughter, who is the wife of Mr. Moon.

The Property was purchased for the consideration of $30,321.75 by the Plan on November 23, 1964, from an unrelated party. At the time of purchase by the Plan the Property was being leased to the Employer. [1] This lease was transferred to and assumed by the Plan and continues to exist between the Plan and the Employer [2]. Two renewals of

[1] The applicant represents that the lease of the Property by the Plan to the Employer is exempt from the prohibited transaction provisions of the Act until June 30, 1984, by virtue of the relief provided by section 414(c)(2) of the Act. The Department expresses no opinion as to the applicability of section 414(c)(2) of the Act to the lease arrangements.

[2] The Department is not proposing an exemption for the lease of the Property by the Plan to the

Continued

the lease were made by the Employer for ten year periods each on November 23, 1974, and November 23, 1984. If there is any difference between the fair market rental values as determined by a qualified independent apprasier and the actual rentals paid after June 30, 1984, the applicant represents that the difference, plus an appropriate rate of interest on the difference, will be paid within 60 days of publication in the Federal Register of the grant for the proposed exemption.

An update of an appraisal, dated November 18, 1985, of the Property was prepared on October 20, 1986, by Mr. William F. Proffitt, S.R.A. of Maryville, Tennessee, a qualified independent apprasier, who determined that the Property had a fair market value of $75,000. When making this updated appraisal, Mr. Proffitt specifically considered the use of the Property by the Employer and its location with respect to the adjoining properties owned by Mr. Bradford's daughter and the Employer. He also expressed an opinion that the highest and best use of the Property is the continuance of its present use by the Employer.

The applicant represents that the Property has no other ready use other than that employed by the Employer. The applicant further represents that if the Plan attempted to sell the Property to an unrelated party, the sale would be for a considerable discount from its appraised fair market value. Furthermore, if the Plan could not sell the Property as proposed in the application for exemption, it would be compelled to terminate the lease and hold the Property as a none-income producing assets. It is the intention of Plan fiduciaries to terminate the Plan as soon as practicable to avoid the continuing administrative expenses and to lquidate its assets in order to pay benefits. A distribution in kind of the Property is not possible because no remaining individual account in the Plan is large enough to accommodate such a transaction.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria for an exemption under section 408(a) of the Act because (a) the Sale will be a one-time transaction for cash with no expenses incurred by the Plan; (b) the Plan will sell the Property at its fair market value as determined by a qualified independent appraiser; (c) the Plan will be able to terminate and distribute in a timely manner the benefits to the remaining Plan participants; and (d) the Plan will be able to avoid selling the Property in a forced sale at a discount; or in the alternative, to avoid holding a non-income producing asset.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Unifi, Inc. Profit Sharing Plan and Trust (the Plan) Located in Greensboro, NC

[Application No. D–6867]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) though (E) of the Code shall not apply to both (1) the proposed contribution of certain real property (the Property) to the Plan by Unifi, Inc. (the Employer), a party in interest with respect to the Plan, and (2) the proposed lease-back of the Property by the Plan to the Employer, provided that the terms and conditions of the transactions are at least as favorable to the Plan as those obtainable from an unrelated party.

Summary of Facts and Representations

(1) The Plan is a defined contribution plan with 718 participants and total assets of $10,647,045, as of June 30, 1986. The assets are invested as follows: 31.7 percent in certificates of deposit, interests in pooled funds, and other interest-bearing bank deposits; approximately 7.5 percent in a receivable for a contribution from the Employer; and approximately 60.8 percent in investments in common stock issued by various publicly held corporations. The NCNB National Bank of North Carolina, a national banking association with its principal place of business in Charlotte, North Carolina, is the trustee of the Plan (the Trustee). However, in connection with the proposed transactions, Wachovia Bank and Trust Company, N.A., a national banking association with its principal place of business in Winston Salem, North Carolina, serves as the independent fiduciarly for the Plan (the Independent Fiduciary). The Independent Fiduciary, when accepting its appointment, in accordance with a written agreement, has been given exclusive discretionary authority with respect to the acquisition, disposition, management and control of the Property and, after a review of the Plan and its portfolio, has rendered a favorable opinion with respect to the proposed transaction. Furthermore, the Independent Fiduciary, in asserting its independence, has represented that it has no banking relationship with the Employer, other than in its capacity as a fiduciary of the Plan, and neither it nor its affiliates have common directors or officers with the Employer.

(2) The Employer is a publicly held New York corporation with 1,475 full-time employees and three wholly-owned subsidiaries. It annual sales for the fiscal year 1986 were $248,900,000, generating a net income after taxes of $10,400,000. The business of the Employer consists primarily of purchasing raw polyestic filament fiber from chemical manufacturers, texturizing the fiber to give it stretch, a softer feel and greater bulk, and selling the texturized yarn domestically and internationally to knitters and weavers who use fabrics for the apparel, industrial, and home furnishing markets. It has manufacturing facilities in Yadkinville, North Carolina and Letterkernny, County Donegal, Ireland. Also, it has manufacturing facilities in Mayodan, North Carolina which are leased to another company. The executive offices of the Employer are located at 7201 West Friendly Road, Greensboro, North Carolina.

(3) The Property, which the Employer proposes to contribute [1] to the Plan and lease-back, is located at 7201 West Friendly Road, Greensboro, North Carolina and consists of two tracts of land, totalling approximately 8.99 acres, with improvements. These improvements include a one-story concrete industrial and office buidling containing 58,565 square feet of which 17,064 square feet is used for the Employer's executive offices and 41,501 square feet for warehouse facilities. The property is not subject to a mortgage or other lien. John T. Taylor of John McCracken & Associates, Inc. of Greensboro, North Carolina, a qualifeid independent MAI appraiser, determined as of June 16, 1986, that the fair market value of the Property is $2,050,000 and the fair market rental value for the first three years of the lease is $218,051.96 per annum with a 16.3 percent increase

Employer. The applicant has represented that the Form 5330 will be filed with the Internal Revenue Service and the exicise taxes for the lease will be paid prior to or within 60 days of publication in the Federal Register of the grant for the proposed exemption.

[1] The applicant represents that the proposed contribution will not cause a violation of section 415 of the Code.

to $253,579 per annum for the last two years of the five year lease. The lease provides for payment of the above rentals over a five year term and an option for the employer to renew the lease for two additional five year periods, subject to a qualified independent appraiser's determination of the fair rental value and the approval of the renewal by the Independent Fiduciary. The rental will also be adjusted at the end of the third year of each renewal period.

(4) The Independent Fiduciary represents (a) that it has extensive experience and understands and acknoweldges its duties and liabilities under the Act as fiduciary with respect to the Plan; (b) that it has been given the authority and has undertaken the responsibility for monitoring the proposed transactions and taking any appropriate actions to safeguard the interests of the Plan; (c) that it has examined the investment portfolio of the Plan, considered the liquidity and diversification requirements and investment objectives and policies of the Plan, including the terms and conditions of the proposed transactions; and (d) that it has determined that the proposed transactions are appropriate for the Plan and in the best interest of the participants and beneficiaries of the Plan. The Independent Fiduciary represents that the proposed transactions offer the Plan a unique opportunity to receive valuable real estate without an outlay of cash or acquisition costs and with a potential for significant long term appreciation in value. In addition, the Plan currently owns no real property and the proposed transactions would further diversify the portfolio of the Plan. Further, the Independent Fiduciary states that the method of adjusting the rental for renewal terms under the proposed lease and the payment by the Employer of all expenses, including the Independent Fiduciary's fees, provides for continued fair market rental income to the Plan throughout the term of the proposed lease.

(5) In summary, the applicant represents that the proposed transactions satisfies the criteria for an exemption under section 408(a) of the Act because (a) the proposed transactions have been approved by the Independent Fiduciary of the Plan, (b) the fair market value of the property has been determined by a qualified independent appraiser; (c) the fair market rental value of the Property has been determined by a qualified independent appraiser and the Plan will receive the fair market rental value under the lease; (d) the Independent Fiduciary will monitor and enforce the terms and conditions under the lease on behalf of the Plan; and (e) the Independent Fiduciary has determined that the proposed contribution of the Property to the Plan and its lease-back are in the interest and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Jamestown Clinic, Ltd. Employee Retirement Plan (the Plan) Location in Jamestown, ND

[Application No. D–6936]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procecdure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406 (a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of certain improved real property (the Property) to Medical Properties, Inc. (MPI), a party in interest with respect to the Plan; provided that such sale is on terms no less favorable to the Plan than the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with 69 participants and assets with a total fair market value of $3,267,239 as of December 1, 1986. The Plan was established in 1952 by Jamestown Clinic, Ltd. (the Employer), a North Dakota professional corporation functioning as a multi-purpose clinic (the Clinic) for the general practice of medicine in Jamestown, North Dakota. On July 1, 1985, the Employer was merged (the Merger) with Dakota Clinic, Ltd. (DCL), a North Dakota professional corporation functioning as a large multi-specialty medical clinic centered in Fargo, North Dakota, employing over 170 physicians and operating fifteen branches in communities of the outlying regions around Fargo. Upon the Merger, DCL became the sponsor of the Plan and assumed all obligations of the Employer. Since the Merger, no contributions have been made to the Plan. All participants in the Plan who are still employed at the Clinic by DCL are now participants in DCL's own pension plan. DCL represents that the Plan may be terminated in the near future. The Trustee of the Plan is Norwest Bank Minneapolis, N.A. (the Trustee).

2. Among the assets of the Plan is the Property, a 48,146 square foot parcel of real property improved with a one-story medical clinic and office building and adjacent parking lots, located at 401 Third Street Southeast in Jamestown, North Dakota. The Property has been utilized and occupied by the Employer as its principal place of business and has been leased by the Employer from the Plan continuously since May 1, 1972. The Employer's lease of the Property from the Plan (the Lease) is the subject of an individual administrative exemption from the prohibited transactions provisions of the Act, Prohibited Transaction Exemption 84–129 (PTE 84–129, 49 FR 34593, August 31, 1984). Upon the Merger, DCL assumed the Employer's obligations under the Lease and DCL continues to operate a medical clinic on the Property, which is the Jamestown branch of DCL. The interests of the Plan for all purposes related to the Property are represented by the Trustee. The current term of the Lease is due to expire June 30, 1987. DCL represents that the Property has recently begun to experience a decline in market value due to adverse economic conditions affecting the value of commercial properties located in rural areas of North Dakota. As of July 2, 1986, the Property had a fair market value of $645,500, according to Harry R. Arneson, MAI (Arneson), an independent professional real estate appraiser in Fargo, North Dakota. Based on Arneson's valuation, the Property constitutes approximately 19.7 percent of the Plan's assets as valued December 1, 1986. According to the Trustee, the Plan has invested a total of $431,361 in the Property, including an original purchase price in 1955 of $255,338.

3. DCL represents that the Clinic is in need of expansion and improvements which would be required in order for DCL to seek a renewal of the Lease beyond its current term. The Trustee has determined that it would not be appropriate for the Plan to invest the additional capital required to make the necessary improvements in the Property. DCL is willing to make the necessary improvements to the Property to enable the continued operation of the Clinic on the Property but is not willing to do so unless the Property is owned by DCL or its property-owning affiliate, MPI. MPI is a closely-held North Dakota corporation, all of the stock of which is owned by shareholders of DCL. Under

the prevailing circumstances and because of the consequences of DCL's possible vacation of the Property on June 30, 1987, the Trustee has determined that the Property should be sold to prevent any financial loss to the Plan. In the interests of relieving the Plan of the Property, providing increased Plan liquidity to accommodate a possible termination of the Plan, and enabling the necessary improvement of the Property for DCL, it is proposed that MPI purchase the Property from the Plan. DCL is requesting an exemption to permit such a purchase under the circumstances described herein.

4. MPI will pay the Plan cash for the Property in the amount of no less than the Property's fair market value according to Arneson's appraisal of July 2, 1986. Arneson's appraisal will be updated as of the date of the sale and the purchase price will be increased in the amount, if any, by which the Property's value has increased since his original appraisal. All costs and expenses related to the sale transaction will be borne by MPI. The Trustee represents that it has evaluated the proposed transaction on behalf of the Plan and has determined that the sale of the Property to the Employer under the terms and conditions described herein would be in the best interests and protective of the Plan's participants and beneficiaries. The Trustee confirms that improvement and expansion of the Property are necessary to enable DCL's continued operation of its Jamestown branch on the Property. The Trustee has determined that DCL's unwillingness to finance such improvements without MPI's ownership of the Property will likely result in a vacancy of the Property upon the Lease's expiration on June 30, 1987. The Trustee represents that it is unlikely that the Property's best use as a medical clinic could continue with another lessee because of the lack of any other local medical group of sufficient size to occupy the facilities on the Property. The Trustee has determined that if MPI does not purchase the Property from the Plan, the Plan may be forced to sell or lease the Property for less than its appraised fair market value. The Trustee represents that a sale of the Property to MPI will prevent financial loss and unnecessary expense related to any alternative disposition of the Property and that the terms and conditions offered in the proposed sale to MPI are more favorable to the Plan than the Plan could expect in a sale of the Property to an unrelated buyer. Finally, the Trustee represents that the proposed sale of the Property to MPI will enable the Plan to realize a gain on the Property of at least $214,139, net of all costs and expenses related to the sale transaction.

5. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons:

(1) The Plan will receive cash for the Property in the amount of no less than its fair market value as of the date of the sale and will incur no costs or expenses related to the sale transaction;

(2) The transaction will yield the Plan a gain and will increase the Plan's liquidity to accommodate a possible termination of the Plan;

(3) The transaction will prevent the expenses and possible losses resulting from DCL's vacation of the Property upon the Lease's expiration;

(4) The transaction is approved and recommended by the Trustee, which represents the Plan for all purposes with respect to the Property.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th Day of January, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 87-2150 Filed 2-2-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87-08]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Advanced Propulsion Technology.

DATE AND TIME: February 20, 1987, 8 a.m. to 5 p.m.

ADDRESS: Administration Building, Room 225, Lewis Research Center, National Aeronautics and Space Administration, 21000 Brookpark Road, Cleveland, OH 44135.

FURTHER INFORMATION CONTACT: Mr. John Facey, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2857.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance and direction to the

aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST). Special ad hoc teams were formed to address specific topics. The ad hoc team on Advanced Propulsion Technology, chaired by Dr. Eugene Covert, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

February 20, 1987

8 a.m.—Welcome and Opening Comments
8:30 a.m.—Systems Analysis for Lightweight Stoichiometric Engines
9:30 a.m.—Parallel Sessions
Materials and Structures
Internal Fluid Mechanics
Instrumentation and Controls
1:30 p.m.—Committee Report Preparation Session
5 p.m.—Adjourn

Dated: January 20, 1987.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87-2024 Filed 2-2-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Thursday, February 19, 1987 at nine o'clock in the morning has been designated by the President's Committee on the Arts and the Humanities for Plenary Meeting XIV. This meeting has been scheduled in the Council Room, Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., in Washington DC. This is a regularly scheduled meetng at which committee activities will be reviewed and progress reported.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds which augment their operational costs and support projects and programs which have been initiated by the President's Committee.

Agenda items on February 19 will include:

• Briefings by the Chairman of the National Endowment for the Arts and the National Endowment for the Humanities on the highlights of their activities.

• *Bicentennial of the American Constitution.* The Honorable Warren E. Burger, Former Chief Justice of the United States.

• *How to Interpret the Constitution on Subjects It Doesn't Mention.* Dr. Robert Goldwin, Director of Constitutional Studies, American Enterprise Institute.

In addition, reports will be made by Dr. Frank Stanton on the *Corporate Council on The Liberal Arts,* Caroline Leonetti Ahmanson on the *Humanities Council,* Deborah Welch, project director and Dr. Gus Burns, Professor of History, University of Florida on the *History Teaching Allicance.*

For further information individuals may call 202/682-5409.

Dated: January 28, 1987.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-2087 Filed 2-2-87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-029]

Yankee Atomic Electric Co., Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR 50.62 to Yankee Atomic Electric Company (the licensee) for the Yankee Nuclear Power Station (Yankee) located at the licensee's site near Rowe, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The exemption would provide relief from requirements of 10 CFR 50.62 for the Yankee Nuclear Power Station. The proposed exemption is in accordance with the licensee's request for exemption submitted by letters dated October 15, 1985 and January 21, 1987.

The Need for the Proposed Action

10 CFR 50.62, "Reduction of Risk from Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants," requires that each pressurized water reactor must have equipment from sensor output to final actuation device, that is diverse from the reactor trip system, to automatically initiate the auxiliary (or emergency) feedwater system and initiate a turbine trip under conditions indicative of an ATWS. For the Yankee plant, the licensee maintains that the risk from ATWS is sufficiently low, considering such factors as power level, unique design features, remaining plant lifetime and remote siting, that addition of diverse actuation of emergency feedwater and turbine trip is not necessary or justified. Therefore, the licensee requested an exemption to these requirements in its October 15, 1985 and January 21, 1987 application.

Environmental Impacts of the Proposed Action

The proposed exemption from the requirements of 10 CFR 50.62 for Yankee will not result in a significant environmental impact because: (1) The Yankee plant is a relatively small pressurized water reactor, about one-fifth the size of new plants. There are significant margins in secondary system inventory, and system operating temperatures and pressure; (2) the plant is located in a sparsely populated area; (3) the long operating history of Yankee shows that the frequency of plant trips/transients is lower than the industry average and that the emergency feedwater system has never been challenged; and (4) the reactor trip system at Yankee does not utilize undervoltage trip devices; a loss of power to the trip breaker also de-energizes the rod holding coils so the rods will insert by gravity. Thus, the likelihood of core melt or radiological release from an ATWS at Yankee is low.

Our evaluation of the proposed exemption indicates that the exemption will not significantly increase the probability or consequences of any radiological releases, and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts and could result in the licensee being in violation of the Commission's regulations.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult with agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption submittals dated October 15, 1985 and January 21, 1987 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Bethesda, Maryland, this 22nd day of January of 1987.

For the Nuclear Regulatory Commission.

Eileen M. McKenna,

Acting Director, Project Directorate No. 1, Division of PWR Licensing-A.

[FR Doc. 87-2120 Filed 2-2-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on February 18, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, February 18, 1987—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review "Safety Conscience" concept at utilities.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcrip is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: January 29, 1987.

John C. McKinley,

Chief, Project Review Branch No. 1.

[FR Doc. 87-2122 Filed 2-2-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Transitional Provisions for Improved Patent Protection in the Republic of Korea

AGENCY: Office of the United States Trade Representative.

ACTION: Notice given regarding opportunity to amend pharmaceutical and chemical process patent applications pending in the Republic of Korea (Korea), and request for submissions regarding protection of certain chemical products in Korea.

SUMMARY: During the two years leading up to November 1985, the United States and the Republic of Korea held a series of consultations aimed at improving Korean protection of U.S. intellectual property rights (patents, copyrights, trademarks). These consultations provided a useful exchange of views, but were unsuccessful in eliciting changes in Korean laws. During that time, losses to U.S. intellectual property owners were increasing from unauthorized reproduction of copyrighted materials and unauthorized use of U.S. inventions.

Accordingly, in November 1985, the President directed the United States Trade Representative to initiate an investigation under section 302(c) of the Trade Act of 1974, as amended, of Korean intellectual property laws and practices. The President terminated the investigation in August 1986, upon agreement by Korea to introduce copyright and software legislation and amendments to the patent laws.

Pursuant to the agreement, Korea has enacted certain amendments to its patent law to take effect on July 1, 1987. These changes include patent coverage for chemical and pharmaceutical products, and for new uses of chemical and pharmaceutical products. Further, Korea will institute certain transitional provisions to minimize the disadvantages to certain owners of U.S. patents and to applicants for Korean patents, which may have resulted from the limitations of the present Korean patent law. Both governments agreed that these provisions would be implemented in a manner to ensure a manageable process.

Specifically, two alternative options will be made available. They are:

I. Applications for process patents pending in the Republic of Korea on the effective date of the new patent law may be amended by adding product claims, upon the request of the applicant. The opportunity to amend process patent applications in this manner will be in effect for ninety (90) days following the effective date of the new patent law. The specific procedures for filing such amendments will be substantially the same as those under the present law.

This option is applicable to products which will be patentable under the amended Korean patent law. A Korean patent granted on an amended application provides a period of protection of 15 years from publication for opposition.

If a U.S. patent application relating to a chemical product is presently pending and the 12-month priority period under the Paris Convention for the Protection of Industrial Property has not yet expired, a related process patent

application filed now in the Republic of Korea could be amended after the effective date of the new patent law provided the Korean application is pending at that time. A related process application may also be filed outside the Convention year, provided the absolute novelty requirement of the Korean law is satisfied.

II. Chemical products, including pharmaceuticals and agrichemicals, subject to pre-marketing regulatory review in the Republic of Korea under relevant laws (e.g., the Pharmaceutical Affairs Law and the Agricultural Chemicals Management Law), which were patented in the United States between January 1, 1980, and July 1, 1987, but were marketed neither in the Republic of Korea nor in the United States of America prior to the effective date of the new patent law, will be protected by denying permission, for ten (10) years from such effective date, to manufacture or market such products in the Republic of Korea without the authorization of the owner of the U.S. patent.

Any natural or juridical person who owns a U.S. patent claiming a chemical product, including pharmaceutical and agrichemical products, that would be subject to pre-market review if manufactured or sold in the Republic of Korea, is eligible to avail himself of this option.

Eligible products will be limited to those which are protected by U.S. patents issued after January 1, 1980, and before the effective date of the new Korean patent law, July 1, 1987. In this respect, it has been agreed that Korea would be furnished with an identification of such products no later than the effective date of the new patent law. Information provided to the Korean Government based upon submissions made pursuant to this notice will not be treated confidentially.

In order to provide Korea with the agreed upon information, owners of U.S. patents eligible for such treatment must submit a declaration to the Office of the United States Trade Representative not later than March 31, 1987, containing the following information:

1. A copy of the relevant U.S. patent.
2. An identification of the patented product that has not and will not be marketed in the United States and in the Republic of Korea prior to the effective date of the new patent law.

Although the product in question must have been the subject of U.S. patent protection after January 1, 1980, a patent may not yet have issued by the time the Declaration is to be submitted to the Office of the United States Trade Representative. Accordingly, information should be supplied identifying the relevant patent application on the basis of which a patent is expected to be granted before July 1, 1987. If a patent is issued before July 1, 1987, on such application, the declarant is required to submit a supplementary Declaration to that effect, together with a copy of such patent.

The product in question must have been identified for commercial applicability and should be identified by its tradename, if such has been established, and also by its generic and chemical names. The Declaration must include a statement that such product is subject to pre-market regulatory review in Korea under relevant laws (e.g., the Pharmaceutical Affairs Law and the Agricultural Chemicals Management law).

The Declaration will be accepted if, and only if, the declarant acknowledges his understanding in the Declaration that willfully false statements and the like will subject him to fine or imprisonment, or both, under 18 U.S.C. 1001. The declarant must also set forth in the body of the Declaration that all statements made of the declarant's own knowledge are true and that all statements made on information and belief are believed to be true. Declarations and materials specified above should be submitted to the Office of the U.S. Trade Representative, Office of the General Counsel, Room 223, 600 17th Street, NW., Washington, DC 20506.

For further information regarding transitional provisions or other proposed changes in Korean legislation contact: Emery Simon, Director for Intellectual Property (202) 395–6864, Sandra Kristoff, Deputy Assistant United States Trade Representative for Asia and Pacific (202) 395–4755, or Catherine Field, Assistant General Counsel, (202) 395–3432.

Judith Hippler Bello,

Chairman, Section 301 Committee.

[FR Doc. 87–2046 Filed 2–2–87; 8:45 am]

BILLING CODE 3190–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

State Agency Advisory Committee; Regular Meeting Notice

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open

SUMMARY: The Northwest Power Planning Coucil hereby announces a forthcoming meeting of its State Agency Advisory Committee, to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix 1, 1–4. Activities will include:

- Final MCS Rule.
- Bonneville's MCS programs.
- Bonneville's Intertie Access Policy.
- Western Energy Study workplan.
- Least cost energy planning.
- Other issues of interest to the task force.

DATE: Thursday, February 5, 1987; 10:30 a.m.–5:00 p.m.

ADDRESS: The meeting will be held at the Idaho Public Utilities Commission, 472 W. Washington Street, State House, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Jim Litchfield, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 87–2084 Filed 2–2–87; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–24021; File No. SR–Amex–84–32)]

Self/Regulatory Organizations; Order Approving Proposed Rule Change; American Stock Exchange, Inc.

I. Introduction

The American Stock Exchange, Inc. ("Amex") submitted on October 30, 1984, a proposed rule change pursuant to section 19(b) (1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to amend Commentary .04 of Amex Rule 154 to reinstate an Amex requirement, rescinded in 1961, that specialists accept stop orders in common stock.[1] In addition, Amex proposes to require specialists to accept stop limit orders where the stop and limit price are not identical. Currently, Amex rules do not allow specialists to accept stop orders in round lots and only require that specialists accept stop limit orders having the same stop and limit prices.[2]

[1] Notice of the proposed rule change together with the terms of substance of the proposal was given by the issuance of a Comission release (Securities Exchange Act Release No. 21654, January 11, 1985), and by publication in the **Federal Register** (50 FR 2745, January 18, 1985). No comments were received with respect to the proposed rule change.

[2] The Amex currently requires specialists to accept stop orders and stop limit orders in options contracts. Amex Rule 950, Floor Rules Applicable to Options.

In 1961, the Amex prohibited the use of stop orders because of concerns of specialist manipulation and abuse in connection with the execution of such orders. In particular, accumulations of stop orders on specialists' books in a number of stocks had led to marked decreases in the stocks' prices when significant selling interest, represented by the stop orders, was triggered. Excessive downward pressure on the market resulted from either apparent manipulation of the market by Exchange specialists through the election of stop orders on their books, or specialists' inability to make fair and orderly markets when excessvie volume in stop orders had been allowed to accumulate.[3]

The Amex has proposed limitations on the execution of stop orders, and a variety of surveillance enhancements, designed to address the problems encountered prior to 1961. The proposed Amex rule would require that a specialist obtain a floor official's approval before executing for his own account a trade which elects one or more stop orders on his book. All stop orders thereby elected would have to be executed at the same price as the electing transaction. In addition, the Amex filing states that "specialists will be reminded that they have the duty to inform a floor official or floor governor whenever there is an unusual accumulation of stop and/or stop limit orders at a specific price or prices which may affect their market making ability in the stock." Amex specialists also will be required to report to floor officials stop order accumulations of 5,000 shares or more within one point either above or below the current market price.[4]

The Commission notes that stop orders continue to be the source of a significant number of public customer complaints concerning order executions and that the potential exists for specialists to abuse stop order election procedures to the disadvantage of public customer orders. The Commission believes, however, that the Amex proposal provides for appropriate floor official review and approval of specialist transactions that trigger (or "elect") stop orders, and provides for adequate surveillance of (1) stop order transactions approved by floor officials, and (2) stocks with large accumulations and executions of stop orders.

Therefore, the Commission has determined to approve the proposed rule change in light of Amex's proposed special surveillance measures described below, together with the overall expansion and improvement of Amex's surveillance procedures.[5]

II. Regulatory Concerns Associated with Stop Orders

Stop sell orders generally are entered in a stock whose price has increased substantially, to protect the investor's profits should the stock price decline. Stop buy orders generally are entered by investors with short positions to limit losses should the stock price increase. A stop buy order will be elected if the stock price increases to or above the stop price.

While stop orders generally are intended to prevent a loss (or preserve a gain), the investor is guaranteed an execution only at the best available price. In contrast, a stop limit order is intended to ensure that the order will be executed at no lower than the limit price. A stop limit order to sell becomes a limit order (as opposed to a market order) executable at the limit price, or at a better price, if obtainable, when a transaction in the security occurs at or below the stop price. A stop limit order to buy becomes a limit order executable at the limit price or better when a transaction occurs at or above the stop price. A stop limit order is intended to guarantee that the order receives an execution at no worse than the limit price. If, however, the market drops below the limit price before the order can be executed, it is possible that the order will not be executed. Thus, the Amex proposal, by permitting the limit price to be entered below the stop price, will increase the opportunities for a customer order to be executed in the event the market continues downward.

Before prohibiting stop orders in common stock in 1961, the Amex encountered two different types of problems with stop order elections. Both types involved specialists electing stop orders through principal transactions in instances where they apparently could have refrained from doing so, while still stabilizing buying and selling interest. In both cases, significant volume in stop sell orders was entered on the specialist's book at various price levels below the market price as the stock price increased.

1. The "Snowball Effect"

After stop orders accumulate in a particular stock, when buying interest slows and the price decreases somewhat, the specialist, buying for his own account, may be able to successively elect stop orders, creating a "snowballing" effect that sharply accelerates the price downswing. In the absence of significant public buying interest, the market may move gradually downward due to the sepcialist electing stop order volume at one price, and by purchasing for his own account. The specialist then may respond to the selling interest thereby elected by lowering his bid further and purchasing the elected volume at the lower price, thus electing additional stop order volume at that price.

2. Gap Elections

Specialists with large stop order volume on their book have "cleaned up the book" first by electing large stop order volume by executing a transaction at a price substantially below the market price, then executing the orders by buying along with public bids at the electing price or at a lower price.[6]

III. Proposed Amex Surveillance Procedures[7]

The Amex has proposed several surveillance measures intended to alleviate the two principal stop order problems the Exchange previously encountered. The proposed Amex Rule addresses the "snowball effect" by requiring that specialists who have elected stop orders in trading for their own account, execute the elected stop order volume at a price no lower than the electing sales price. The proposed Amex Rule is intended to assure that gap elections only occur in response to

[3] The Comission detailed a number of problems associated with the execution of stop orders in its 1963 study of stop orders. *See* Division of Trading and Exchanges, SEC. *Stop Orders*, (1963) ("Stop Order Study").

[4] *See* letter from Simon Krauthamer, Assistant Vice President, Amex, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated February 21, 1985 ("February 21, letter").

[5] As discussed in more detail below, we note that the Commission is approving the portion of the rule filing setting the gap pricing parameters only for a one year pilot period.

[6] The principal difference between the "snowball" effect and "gap elections" is that the former is characterized by the specialist's making substantially narrower markets. They arrive, however, at the same result—a significant drop in the stock's price.

As the Stop Order Study noted, the specialist, in making a gap election, arguably is making a fair and orderly market by buying the accumulated stop sell orders in response to heavy selling interest. The Stop Order Study also stated, however, that stop orders at prices between the market quote and the specialist's bid may not receive the best execution. By allowing the market to fall substantially in executing the stop orders, the specialist thereby may be able either to cover profitably a short position or establish a position at a favorable price.

[7] Several proposed surveillance procedures were described in a letter from the Amex. *See* February 21 letter, *supra* note 4; letter from Brandon Becker, Assistant Director, Division of Market Regulations, to Simon Krauthamer, dated April 22, 1986, and letter from Simon Krauthamer to Brandon Becker, dated August 6, 1986 ("April 22" and "August 6 letters," respectively).

market forces (1) by requiring floor official approval for all specialists' electing transactions,[8] and (2) by providing Amex surveillance with a daily record of all specialist dealer transactions, including those involving stop orders, so that Amex off-floor surveillance personnel also can examine the appropriateness of the electing transaction.

Regarding the latter procedure, the Amex would require that Amex Specialists provide a daily record of all stop order transactions by indicating on Form 191[9] which of their previous day purchases or sales elected stop orders, and obtain on the Form the signature or stamp of the floor official who approved the electing transaction. Stop order data would be reviewed daily by the staff of the Amex Trading Analysis Division to identify stocks with stop order accumulations that might pose market making problems. In addition, the Amex has indicated that its Market Surveillance Division could thereby review, on a case-by-case basis, instances of floor official approval of specialists' stop order elections to determine whether approval was warranted. In this regard, the Amex stated that its review would be conducted independently of the floor officials' assessment of the available information.[10]

In addition, specialists will be required to report to floor officials stop order accumulations of 5,000 shares or more within one point above or below the existing market price, to apprise the officials of potentially volatile market situations. Further, the Amex will require that a specialist record on Form 191 whenever he has stop order volume of 5,000 shares or more within one point of the market price, and indicate which floor official the speicialist informed of the stop order accumulation.[11]

With respect to gap elections, the specialist participating in a gap election will be required not only to receive floor official approval, but also a written explanation by the floor official of the external reason for the election,[12] when the gap between the specialist's bid or offer and the previous last sale is ⅜ point for stocks with a previous last sale of less than $10, ¾ point for stocks between $10 and $20, and one point for stocks over $20.[13] These procedures will be implemented on a one year pilot basis, after which the Exchange and the Commission will assess the adequacy of these gap pricing parameters for purposes of requiring written floor official approval of gap elections.[14]

In addition, the Amex will issue an interpretation under Amex Rule 170 ("Registration and functions of Specialists") to provide that specialists would be prohibited from making a purchase (sale) as principal above (below) the last different price if the purchase or sale would elect a stop or stop limit order held by a specialist. The specialist, however, could obtain a floor official's advance exemption from this rule interpretation if there are unusual circumstances in the market for that particular stock or in the general market.[15]

The Amex also stated that, pursuant to Amex Rule 22, floor officials can ban stop and stop limit orders in a stock when it appears that the acceptance of such orders would be "detrimental to the market." [16] Amex Market Surveillance also could impose a stop order ban until it determined that the market for the security had stabilized.

IV. Discussion

While the Commission has been long aware of the potential market making problems associated with stop orders, the Commission believes that the proposed Amex rule and surveillance procedures, if properly administered, should provide a satisfactory regulatory scheme for the handling of stop orders by Amex specialists.

The proposed Amex rule would tend to limit the "snowball effect" by requiring that elected orders be executed at the same price as electing transations. In addition, the proposed Amex rule will involve the floor official in determining the appropriateness of specialist stop order elections. In this regard, the Amex would provide two levels of review of specialist execution of stop orders: (1) Floor official oversight, and (2) Amex surveillance examination of both floor official and specialist performance.

Further, the Commission notes that certain Amex surveillance procedures, notably the stop order audit trail capability provided by specialist reports on Form 191, should provide accessible data for all stocks with stop order volume. In addition, the Amex's proposed surveillance procedures should enable the Exchange to anticipate stop order accumulations that could destabilize the market, by requiring that a specialist report stop order volume of 5,000 shares within one point of the market price to a floor official.[17]

The Amex rule does not, however, directly address the potential problem of "gap elections" *i.e.*, under the proposed requirements the specialist could bid below the market and elect stop orders at significantly reduced price levels. As noted above, Amex has sharply curtailed this ability by prohibiting, in the absence of prior floor official approval, a specialist's principal

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[8] NYSE Rule 123A.40 has a similar requirement that the specialist obtain floor official approval for all of his dealer transactions that elect stop orders.

In this connection, the Exchange plans to develop an informaitoin circular describing appropriate and inappropriate circumstances for floor official approval of specialists' electing transactions, and hold instructional meetintgs with floor officials. Indeed, the Commission expects that such an informaiton circular generally wil, describe the regulatory framework applicable to stop orders and provides specific examples of appropriate and inappropriate stop order execution procedures.

[9] Form 191, required to be filed daily prior to the opening, pursuant to Amex Rule 191, must include the name of the security and the price at which it was purchased or sold.

[10] *See* April 22 and August 6 letters, *supra* note 7.

[11] *Id.* Amex has agreed to review, over the next six to nine months, the 5,000 share/one point reporting requirement and to report to the Commission, in writing, their experience with this standard.

[12] Although, as noted above, "gap" elections can be abused, they also may reflect legitimate price movement which reflects the entry of significant new infomation to the market. Where there has been no significant new market information, the Commission can indentify no appropriate reason for the specialist to create a gap election through effecting a transaction for his own account. Accordingly, the Commission is especially interested in ensuring that the Amex's surveillance system be capable of identifying, with specificity, the reason for a "gap" election.

[13] As of October 31, 1986, 463 Amex stocks traded at less than $10 per share, 252 traded between $10 and $20, and 224 traded at $20 or more.

[14] During the one year pilot, Amex will collect additional data relating to the number of gap elections at ¼ point for stocks less than $10, ½ point for stocks between $10 and 20, and ¾ point for stocks over $20. Whenever the specialist elects or participates in the election of a stop order, the specialist will indicate on Form 191 the previous sale price. The Amex staff will tabulate the number of stop orders elected by the specialist, or in which the specialist participated, at the ¼, ½, and ¾ point parameters noted above, based on review of the specialist's Form 191. For purposes of this review, the Amex will review each specialist unit's Form 191s on a random basis. Amex also indicated that order tickets (which must indicate whether the order was entered with stop) are reviewed peridodically, and that they will be compared with the Form 191 as a check to verify that the specialist is noting the previous sale price for all stop orders which he elects or in which he participates. *See* April 22 and August 6 letters, *supra* note 7.

[15] This interpretation is similar to Amex Rule 207 ("Limitation on Electing Odd-Lot Stop Orders"), which prohibits, in the absence of prior floor official approval, the principal purchases (or sales) above (or below) the last differnt price that would elect an odd-lot stop or stop limit order.

In addition, the Amex will provide examples of the unusual market circumstances that could warrant the grant of an exemption by a floor official. *See* April 22 and August 6 letters, *supra* note 7.

[16] *See* February 21 letter, *supra* note 4.

[17] Moreover, we note tha Amex's review of the 5,000/one point reporting requirement will enable the Commission and Amex to assess whether the reporting standards are adequate or should be altered.

purchase (sale) above (below) the last sale price if the purchase for sale would elect a stop or stop limit order held by the specialist. Nevertheless, the Amex will have to rely on the judgment and diligence of floor officials and its Market Surveillance Department, as well as on the specialists, to ensure that liquid and continuous markets are made in stocks with stop order accumulations.

In this regard, the Commission believes that two measures seem particularly suited to promoting fair and orderly markets in such stocks by enabling Amex surveillance to identify stocks requiring special monitoring: (1) The requirement that spcialists indicate on Form 191 those electing transactions executed for their own account, and (2) the requirement that floor officials be informed of all accumulations and executions of stop orders that exceed 5,000 shares. The Amex's Trading Services Division could thereby ensure that: (1) Electing transactions executed for the specialist's own account received floor official approval and that the floor official provided a written explanation for gap elections when the gap is at a specified lower price; [18] (2) specialists executed stop orders at no worse than the electing price; and (3) specialists did not abuse the gap election procedures. In addition, Form 191 data would facilitate the Amex's identifying those stocks that are likely candidates for stop order bans.[19]

Although the principal vehicle for Amex oversight of specialist and floor official preformance will be Form 191 information, the Commission notes that floor officials must be capable of making appropriate decisions while on the trading floor regarding specialists' reports of stop order accumulations or requests for approval of electing transactions. The Commission notes that the Amex plans to educate floor officials regarding potential on-floor situations commonly encountered involving stop orders both through an information memorandum describing such situations and instructional meetings.

[18] Because of the importance of the gap pricing parameters that establish when a specialist must get written floor official approval, with an explanation, to participate in a gap election at a specified lower price, the Commission is only approving these pricing parameters for a one year pilot period. This will allow the Commission to review how these procedures are working on the Amex floor and determine whether the parameters should be altered, modified or approved on a permanent basis.

[19] The data also would indicate whether a specialist had large stop order volume on his book about which he should have informed a floor official.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 21, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2123 Filed 2-2-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24026; File No. SR-DTC-86-10]

Self-Regulatory Organizations; Depository Trust Co.; Filing of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on December 23, 1986, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The Commission is publishing this notice to solicit comment.

The proposal would expand the methods of access to DTC's Computer-to-Computer Facility II ("CCF-II"). CCF-II allows DTC Participants to transmit to and receive from DTC transactional data through a link between DTC's mainframe computer and Participant's mainframe computer. Presently, Participants can use CCF-II only if they have access to a mainframe computer manufactured by IBM. The proposed rule change would allow Participants with non-IBM computers to use CCF-II. In addition, the proposal would allow DTC Participants with an IBM MVS/Bulk Data Transmission ("BDT") computer to make high speed transmission of bulk data to and from DTC through the CCF-II system.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will (A) by order approve such proposed change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons may submit written comments about the proposal by filing six copies of their comments with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20459. Copies of the filing also will be available for inspection and copying at DTC's principal office. All comments should refer to the file number in the caption above and should be submitted by February 24, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: January 27, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2127 Filed 2-2-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 7-9590, et al.]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 27, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Taiwan Fund Inc.
Common Stock, $.01 Par Value (File No. 7-9590)

Universal Health Realty Income Trust
Shares of Beneficial Interest (File No. 7-9591)

M.D.C. Asset Investors, Inc.
Common Stock, $.01 Par Value (File No. 7-9592)

Servicemaster Limited Partnership
Shares of Limited Partnership Interest (File No. 7-9593)

Alleghany Corporation (Delaware)
Common Stock, No Par Value (File No. 7-9594)

Fruehauf Corporation (Delaware)
Class B Common Stock, $.01 Par Value (File No. 7–9595)
Fruehauf Corporation (Delaware)
$3.68 Series A Cumulative Exchangeable Redeemable Preferred Stock (File No. 7–9596)
Homestead Financial Corporation (Delaware)
Class A Common Stock, $.01 Par Value (File No. 7–9597)
Homestead Financial Corporation (Delaware)
Class B Common Stock, $.01 Par Value (File No. 7–9598)
Lucky Stores, Inc. (Delaware)
Common Stock, $1.25 Par Value (File No. 7–9599)
Sun Chemical Corporation
Class A Common Stock, No Par Value (File No. 7–9600)
Sun Chemical Corporation
Class B Common Stock, No Par Value (File No. 7–9601)
Standard Pacific Corporation L.P. (Delaware)
Depository Receipts, No Par Value (File No. 7–9602)
Transworld Corporation Liquidating Trust
Units of Beneficial Interest, No Par Value (File No. 7–9603)
TW Services, Inc.
Common Stock, $.01 Par Value (File No. 7–9604)
Wisconsin Electric Power Company (Holding Company)
Common Stock, $.01 Par Value (File No. 7–9605)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 18, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87–2125 Filed 2–2–87; 8:45 am]
BILLING CODE 8010–01–M

[File No. 7–9606]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

January 28, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Premark International, Inc.
Common Stock, $1.00 Par Value (File No. 7–9606)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 19, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz.
Secretary.

[FR Doc. 87–2126 Filed 2–2–87; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 35–24305]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Appalachian Power Co.

January 28, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 18, 1987, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Appalachian Power Company (70–7345)

Appalachian Power Company ("APCo"), 40 Franklin Road, S.W., Roanoke, Virginia 24011, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

APCo proposes to issue and sell, in one or more transactions from time to time through December 31, 1987, up to $100 million aggregate principal amount of its First Mortgage Bonds ("Bonds"), in one or more new series, each with a maturity of not less than 5 years and not more than 30 years. The interest rate on the principal amount of Bonds and the price to be paid to APCo for the Bonds will be determined at the time of the sale or sales by competitive bidding. APCo may employ alternative competitive bidding procedures in accordance with the Commission's statement of policy set forth in HCAR No. 22623, September 2, 1982, or as an alternative, subject to Commission approval, it may publicly or privately place the Bonds.

As an alternative to the issuance of the Bonds, APCo proposes, subject to receipt of appropriate authorization, to issue, from time to time through December 31, 1987, up to $100 million principal amount of its unsecured notes with a maturity in excess of twelve months ("Notes") to one or more commercial banks pursuant to a proposed term loan agreement. The proposed term loan agreement would provide that the Notes bear interest at a fixed rate per annum not in excess of 12%. APCo has requested an exception to the competitive bidding rules pursuant to Rule 50(a)(5) with respect to possible placement fees of .5% of the principal amount borrowed.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2124 Filed 2-2-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 1-87]

Treasury Notes, Series U-1989

Washington, January 22, 1987.

The Secretary announced on January 21, 1987, that the interest rate on the notes designated Series U-1989, described in Department Circular—Public Debt Series—No. 1-87 dated January 15, 1987, will be 6⅛ percent. Interest on the notes will be payable at the rate of 6⅛ percent per annum.

Bart Derrick,

Acting Fiscal Assistant Secretary.

[FR Doc. 87-2018 Filed 2-2-87; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 22
Tuesday, February 3, 1987

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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., February 3, 1987.

PLACE: 2033 K Street NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proposed Revisions to Part 9—Rules relating to the review of Exchange disciplinary or other adverse actions.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2189 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 3, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matter.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2190 Filed 1–30–87; 12:33 p.m.]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 6, 1987.

PLACE: 2033 K St., NW., Washington, DC 8th Floor Conference Room.

STATUS: CLOSED.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2191 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 13, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2192 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., February 18, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Third Quarter Goals and Objectives, FY 1987.

Application of the Chicago Mercantile Exchange for designation as a futures contract market in the U.S. Dollar Index

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2193 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 20, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2194 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., February 24, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:
Revision of Federal Speculative Position Limits—proposed rules
Proposed Chicago Board of Trade Clearing Corporation Bylaw 110—settlement price procedures

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2195 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 24, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2196 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., February 24, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2197 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 27, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–2198 Filed 1–30–87; 12:33 pm]

BILLING CODE 6351–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the regular meeting of the Farm Credit Administration Board (Board) scheduled for February 3, 1987, has been cancelled. The next meeting of the Board is scheduled for March 3, 1987.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4010.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: January 29, 1987.

Kenneth J. Auberger

Secretary Farm Credit Administration Board.

[FR Doc. 87–2133 Filed 1–29–87; 4:37 pm]

BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552), notice is hereby given that at 10:40 a.m. on Thursday, January 22, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of the closed bank, with respect to the following: (a) National Bank of Frederick, Frederick, Oklahoma, which was expected to be closed later in the day by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency; and (b) First Sierra Bank, Bishop, California, which was expected to be closed on Friday, January 23, 1987, by the Superintendent of Banks for the State of California.

(B)(1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the transfer of insured deposits in The First National Bank of Marlboro, Marlborough, Massachusetts, which was expected to be closed on Friday, January 23, 1987, by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, or (2) in the event no acceptable bid for a deposit transfer transaction is submitted, make funds available for the payment of the insured deposits of the closed bank.

At that same meeting, the Board of Directors also considered the application of Rainier Bank Oregon, National Association, Gresham, Oregon, for consent to purchase the assets of and assume the liability to pay deposits made in Rainier Bank Oregon, a Federal Savings Bank, Portland, Oregon, a non-FDIC-insured institution.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Director C.C. Hope, Jr. (Appointive), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meetings 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 28, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–2146 Filed 1–29–87; 4:37 pm]

BILLING CODE 6714–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Meeting

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATE: February 11–12, 1987, 9:30 a.m.

PLACE: Sheraton/Spokane Hotel, North 322 Spokane Falls Court, Spokane, Washington.

MATTERS TO BE CONSIDERED:

February 11, 1987

1. Amendments to the Columbia River Basin Fish and Wildlife Program
   - Salmon and steelhead framework
   - Bypass at Corps dams
   - Transportation of juvenile fish
   - Artificial production of salmon and steelhead
   - Resident fish projects above Hells Canyon Dam
   - Final action on amendments package
2. Council Action on Response to Comments on Model Conservation Standards Amendment
3. Council Business

February 12, 1987

4. Public Comment and Council Action on Petitions to Adopt Model Conservation Standards for Existing Residential Buildings
5. Public Comment on Amendments to the Model Conservation Standards regarding a Surcharge for Conversion Standards and Model Conservation Standards for Federal Agency Customers
6. Council Action on Bonneville Power Administration's Power Work Plan
7. Council Action on Comments on Bonneville Power Administration's Resource Strategy
8. Public Comment. Note that public comment has closed on items 1 and 2.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 87–2223 Filed 1–30–87; 2:10 pm]

BILLING CODE 0000–00–M

POSTAL RATE COMMISSION

TIME AND DATE: 9:00 a.m. on Thursday, February 5, 1987.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: To discuss the Commission's decision and opinion in Docket Nos., N86–1/MC86–3.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 87–2221 Filed 1–30–87; 1:56 pm]

BILLING CODE 7715–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, February 3, 1987 at 2:30 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731–TA–371 (P) (Fabric and expanded neoprene laminate from Taiwan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary.

January 23, 1987.

[FR Doc. 87–2188 Filed 1–30–87; 12:30 pm]

BILLING CODE 7020–02–M

federal register

Tuesday
February 3, 1987

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43, 91, 121, 127, and 135

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 91, 121, 127, and 135

[Docket No. 23799; Amdt. Nos. 43-26, 91-198, 121-190, 127-41, 135-22]

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft. The rule adopted continues to require a transponder for operation in each terminal control area (TCA) and in the airspace of the 48 contiguous states and the District of Columbia above 12,500 feet above ground level (AGL). Automatic pressure altitude reporting equipment, which is currently required in all of the above airspace except Group II TCA's, will be required in Group II TCA's effective December 1, 1987. The rule provides for a phased transition from ATCRBS to Mode S transponders in the National Airspace System (NAS) by limiting the manufacture and installation of ATCRBS transponders. After January 1, 1992, all newly installed transponders in U.S.-registered civil aircraft are required to meet the requirements of the technical standard order (TSO) for airborne Mode S transponder equipment. The rule also permits ATCRBS transponders already installed on that date to be used indefinitely. Projected increases in air traffic will require improved aircraft location and identification information, which will be provided by the Mode S and automatic pressure altitude reporting equipment. These requirements are an essential component of the NAS Plan. Mode S is also necessary technical prerequisite to obtain data link services which allow digital exchange of information between aircraft and the ground. The FAA will provide these services beginning on/about 1990. This action also sets forth test and inspection requirements for the Mode S transponder and a new output power test requirement for the ATCRBS transponder.

EFFECTIVE DATE: April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Falsetti, Airspace and Air Traffic Rules Branch, Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9249.

SUPPLEMENTARY INFORMATION: The three kinds of aircraft equipment addressed by this rulemaking are as follows:

Air Traffic Control Radar Beacon System (ATCRBS). A radar system in which the aircraft to be detected is equipped with a radio receiver/transmitter called a transponder. Radar pulses transmitted from the ground are received by the transponder and used to trigger a distinctive transmission from the transponder. The controller's radar receives this transmission and displays a distinct and amplified return on the radar scope.

Mode S Transponder. The Mode S Transponder is an advanced version of the existing ATCRBS transponder. The Mode S transponder is completely interoperative and compatible with the current ATCRBS system. Mode S utilizes a discrete set of radio pulses (code) for each individual aircraft, and is not limited to the maximum 4,096 possible codes of the ATCRBS transponder. Mode S also adds the capability to provide a data link between the aircraft and the ground.

Mode C (Automatic Altitude Reporting Equipment). Some transponders are equipped with a Mode C capability. Mode C is that function of a transponder which responds to specific ground interrogations by transmitting the aircraft's current altitude in 100 foot increments. This information is received by ground equipment and displayed on the controller's scope in the data block for the transmitting aircraft. Mode C may be used with both ATCRBS and Mode S transponders.

History

On October 18, 1983, the FAA published an Advance Notice of Proposed Rulemaking (ANPRM) announcing the proposed use of Mode S transponders in the NAS (48 FR 48364, Notice No. 83-16). The following was proposed to take effect by 1992 or earlier, as noted:

1. Issuance of a technical standard order (TSO) for airborne Mode S transponder equipment. With issuance, TSO authorization to manufacture ATCRBS transponders would be terminated effective in 1986.

2. Amendment of Federal Aviation Regulations (FAR) Part 43 to include tests and testing procedures appropriate to Mode S transponders.

3. Amendment of FAR Part 91 as follows:

a. Newly installed transponders in U.S.-registered civil aircraft would meet requirements of the new TSO for airborne Mode S transponder equipment.

b. Either a Mode S or ATCRBS transponder, as well as automatic pressure altitude reporting equipment, would be necessary to operate in TCA's.

c. Either an operable Mode S or ATCRBS transponder, as well as automatic pressure altitude reporting equipment, would be necessary above 12,500 feet MSL in U.S. airspace. The proposal would retain the current exception for gliders above 12,500 feet MSL and retain provisions for helicopters and air traffic control (ATC) authorized deviations.

d. Automatic pressure altitude reporting equipment would be required for operations in Group II TCA's.

4. Amendments to FAR §§ 121.345(c), 127.123(b), and 135.143(c) to be consistent with the amendments to Part 91.

Comments—Proposed Introduction of Mode S

Comments were generally favorable to the proposed introduction of Mode S in the NAS. Twelve (12) comments were received which, though generally supportive, expressed some concern in several areas.

The areas of concern centered on:

1. The ramifications to U.S. manufacturers, foreign governments, and various international users regarding early cutoff of the TSO authorization to manufacture ATCRBS transponders in 1986.

2. The need for improved accuracy of altitude data, improved automatic pressure altitude reporting equipment, and reduced quantization (i.e., smaller intervals of reported altitudes) of aircraft reported altitude in the Mode S environment.

3. The impact of the proposed installation requirement on the Department of Defense (DOD) and on general aviation aircraft owners and operators.

4. The impacts on pilot cockpit workload, awareness of other air traffic, and the vulnerability to errors in altitude reporting in an automated system.

5. The extent of U.S. airspace within which Mode S would be required.

6. The bottom-line services and benefits that Mode S offers users,

particularly general aviation users, in the NAS.

On September 17, 1985, the FAA published a Notice of Proposed Rulemaking (NPRM) (50 FR 37674, Notice 85–16) which reflected consideration of the concerns expressed in response to the ANPRM.

1. The NPRM acknowledged that an early U.S. withdrawal of the ATCRBS TSO authorization would likely have an unnecessarily disruptive and adverse economic effect on U.S. manufacturers' international sales of the ATCRBS and in addition an adverse effect on the regulatory and certification processes of foreign countries. To meet the dual objectives of permitting the continued manufacture and sale of ATCRBS transponders for foreign distribution and consumption while accomplishing an orderly domestic phase-in of Mode S transponders, the FAA proposed a schedule of installation requirements applicable only to ATC transponder equipment installed in U.S.-registered civil aircraft. The schedule was as follows:

Mode C automatic pressure altitude reporting equipment would be required in Group II TCA's effective January 1, 1992.

Transponder equipment, except equipment reinstalled in an aircraft from which it was removed for maintenance, would be required to meet TSO performance and environmental requirements in accordance with the following schedule:

1. Through December 31, 1986:

Any class of ATCRBS transponder (TSO–C74b or TSO–C74c), as appropriate; or any class of TSO–C112 (Mode S).

2. January 1, 1987, through January 1, 1992:

Any class of ATCRBS transponder (TSO–C74b or TSO–C74c) if the equipment was manufactured before January 1, 1987; or any class of TSO–C112 (Mode S).

3. After January 1, 1992:

Any class of TSO–C112 (Mode S).

As stated in the NPRM, the revised schedule was seen as providing several options to the U.S. civil aircraft operator. For example, the operator could use a previously installed ATCRBS transponder as long as it could be maintained. Through December 31, 1986, the operator could elect to replace a previously installed transponder or install a newly manufactured or used ATCRBS or a Mode S transponder meeting appropriate TSO specifications. From January 1, 1987, through January 1, 1992, the operator could elect the same options with one restriction. If the operator elects to install a new or different ATCRBS transponder, it must have been manufactured prior to January 1, 1987.

2. With respect to the concerns relative to improved accuracy of altitude data, improved automatic pressure altitude reporting equipment, and reduced quantization of aircraft reported altitude, the FAA agreed there would be benefits from greater precision in automatic altitude reporting. However, the agency maintained that each area would require separate development of the associated technology and procedures; and in each case, the FAA would seek public and industry input on the specific proposal. In addition, the existing equipment and procedures were determined to be fully adequate to support the additional reporting requirements proposed in the NPRM. For the above reasons, and because the suggested improvements were beyond the scope of the NPRM, the FAA determined it would not be appropriate to incorporate such suggestions in the Mode S NPRM. The agency did announce it would consider the institution of separate rulemaking for adoption of the requested improvements.

3. It was also recognized in the NPRM that an early cutoff of the ATCRBS TSO would adversely affect DOD equipage plans for its sizeable fleet. Accordingly, the FAA stated in the preamble to the NPRM that it proposed to permit continued manufacture of ATCRBS transponders to correspond to the DOD Mark XV implementation schedule.

4. The preamble to the NPRM also recognized the concern expressed concerning the adverse effect a "silent" Mode S data link environment would have on overall pilot traffic awareness and pilot workload in the cockpit. Again, these concerns were considered to be well beyond the scope of the NPRM. The FAA stated in the NPRM that in its implementation of data link, the agency would involve the public in its studies of all factors associated with each kind of message being considered for data link.

5. The concerns relative to the impact of Mode S on general aviation were articulated by the Aircraft Owners and Pilots Association (AOPA). AOPA's position was that the benefits of Mode S would accomplish acceptance of Mode S on a voluntary basis and that is should not be mandated. AOPA also questioned the benefits of Mode S to low altitude traffic. AOPA went on record as opposing Mode S if it were mandated above 6,000 feet. AOPA did recognize that the FAA proposal was to mandate Mode S or ATCRBS above 12,500 feet and within TCA's

FAA responded to the issues of bottom-line benefits, scope of airspace wherein Mode S is proposed, and service capabilities with a summary of the benefits of the NAS Plan. The goals of the NAS plan were broadly presented in the preamble of the NPRM as those designed to meet the pressures of increased demands for aviation services, limit costs, and provide and improve facilities. The preamble further stated that the plan for Mode S is incorporated in the NAS Plan because Mode S is considered to provide the airborne data link capability in NAS. The following excerpts from the NPRM describe in summary the NAS Plan and the role of Mode S in the NAS.

The NAS Plan is a comprehensive plan supported by large increases in automation to yield significant improvements in service and cost savings to the airspace user, the taxpayer, and the ATC system. Cost savings are expected through reductions in delays and fuel consumption due to improved traffic handling capabilities and the increased ability of the ATC system to accommodate direct, pilot-preferred routings. The effectiveness of NAS is expected to be dependent, in great part, upon a surveillance system which can provide accurate position information, relatively interference-free aircraft identify through selective addressing, and automatic pressure altitude reporting equipment. The Mode S transponder, coupled with its associated automatic pressure altitude reporting equipment, is considered a key piece of avionics necessary to participate fully in and receive the benefits of the NAS.

To summarize the role of Mode S in the NAS, Mode S is an advanced secondary radar system expected to provide improved accuracies in the surveillance of aircraft position and more interference-free identity and altitude reports to ATC.

Comments on the NPRM

The NPRM comment period expired December 16, 1985. At the request of the Air Transport Association (ATA), the comment period was reopened. The reopened period extended from February 14 to March 3, 1986 (51 FR 5686, Notice 85–16). A total of 15 commenters responded during both the original and reopened comment periods. There was general support and acceptance of the proposal. However, those in support of the proposal did express certain reservations and suggestions for improvement. Those in general support of the proposal but with comment and suggestions were the Air

Traffic Control Association (ATCA), Air Line Pilots Association (ALPA), Soaring Society of America (SSA), Experimental Aircraft Association (EAA), General Aviation Manufacturers Association (GAMA), Air Transport Association (ATA), the State of Montana, and Aerospace Industries Association of America (AIAA), Rockwell International, and Allied Bendix Aerospace. Those generally opposed to the proposed introduction of Mode S into the NAS were the Aircraft Owners and Pilots Association (AOPA), the National Business Aircraft Association (NBAA), Foster Airdata, and two private citizens.

Issues

A common element in the comments was a perception that the agency is proceeding too quickly in mandating Mode S. Many commenters stated or implied that the FAA is accelerating the Mode S transponder requirement without giving due regard to the need for allowing a reasonable acceptance period on the part of all parties affected. Those identified as being affected by an accelerated transition from ATCRBS to Mode S equipment included the manufacturers who must design, develop, produce, and market Mode S; aircraft manufacturers who design and manufacture their aircraft cockpits to accommodate installation of Mode S; installers; and general aviation owners and operators who will make the ultimate decisions to purchase and install it.

The following are the major issues and related subissues presented in the public comments.

Major Issues

a. Mode S is costly.

b. The proposed installation schedule for Mode S transponders creates problems for:

—Avionics manufactures.

—Aircraft manufactures.

—Airlines.

—Owners and operators who believe they may be forced into making two purchase decisions, an initial one for a surveillance transponder, and a subsequent purchase when added data link services become available. In addition, commenters representing general aviation believe the general aviation operators may be forced into purchasing a transponder whose benefits are questionable.

c. Data link services to be available are indefinite. FAA has made no commitment to data link, causing uncertainty as to when and what services will be available.

Other issues

There were a number of other issues and subissues raised. They are as follows:

1. There is no justification for automatic pressure altitude reporting equipment in Group II terminal control areas (TCA). On the other hand, other commenters expressed the opposite view. That view was that there is a recognizable need for automatic pressure altitude reporting equipment and its use should be required by separate rulemaking.

2. The recent decline in aviation growth does not bear out original NAS plan estimates and it makes the mandating of Mode S transponders unnecessary.

3. There are deficiencies and problems with the proposed transponder tests.

4. There are performance weaknesses and deficiencies associated with Mode S, data link, and Mode C altitude reporting equipment.

5. Use of Mode S with data link would create a "silent" environment, as opposed to today's "party line" voice communications environment. A silent environment is hazardous to flight safety.

6. The Mode S requirements may adversely affect DOD fighting capability.

7. The U.S. may be breaking International Civil Aviation Organization (ICAO) agreements if it issues a rule without international approval.

8. Issuance of Mode S requirements prior to issuance of the Mode S TSO is premature.

Discussion of major issues

a. Major issue number 1: Mode S is costly. Generally, concerns were expressed that Mode S transponders could impose a financial burden on the industry and that the FAA seems little concerned that added costs will have the greatest effect on the general aviation fleet. Major concerns associated with cost were—

(1) Mode S transponder prices, even before data link is added, will be higher, creating a smaller market, which in turn will drive the cost even higher.

The effect of higher prices would be to freeze or reduce the transponder equipage levels at the lower end of the fleet.

(2) Mode S transponders with data link will cost more because they are significantly more complicated and complex.

One commenter said that FAA's finding in its economic evaluation that the difference in cost between the ATCRBS and a basic Mode S transponder would be approximately $600 after a break-in period, was fallacious. This was said to be so because if real-time weather and automated ATC data link communications are the Mode S benefits, a surveillance-only transponder would not be very marketable. In other words, to take full advantage of data link and automation benefits, the Mode S transponder will be considerably more complicated, and therefore more costly, than a survillance-only transponder.

(3) There may be a need to make more than one buy of a Mode S transponder.

One commenter said that without any real FAA definition of what if any data link services might be available, an operator might at first buy a basic Mode S tranponder and subsequently be faced with a decision to buy another more expensive model when and if operationally effective data link services become available. On this issue, the ATA suggested that data link, at least at the basic communications level, should be required by regulatory schedule. This would permit introduction of data link for ATC purposes, without requiring replacement of the basic transponder. It would also permit reasonable investment decisions for equipment to be installed at earlier dates.

(4) Mode S transponders will have a negative cost impact on small helicopters and airplanes, and on the DOD fleet.

This commenter said the DOD would feel a great impact because of its large new fleet which would be introduced during transition to Mode S. The U.S. Army alone has nearly 10,000 helicopters now, most of which are being replaced by new helicopters which could be required to carry advanced navigational capabilities of ATCRBS and Mode S equipment. The commenter concluded that the proposed requirement seemed to be excessively redundant and expensive

Discussion of cost issue.

Under the narrow-demand, higher-price, and resultant equipage-freeze theory, the industry would produce fewer transponder options if there is a narrow base of demand, focusing on the higher end of the market (with built-in data link). FAA discussions with marketing representatives of two manufacturers of transponder equipment did not support this scenario. Both companies advised they expect to continue to produce mainly for major portion of the market. They do not expect any significant contraction in the

demand for their transponders in the 1990's in large part because of the expected existence of a substantial retrofit market. With regard to the market as a whole, although there has been a dramatic decline in the production of general aviation aircraft in recent years, the size of the total fleet and the number of hours flown have remained fairly constant or increased somewhat. Furthermore, the manufacturers have the freedom to produce basic Mode S equipment that will be upgradable or have data link capability, thereby enhancing its attractiveness to potential purchasers of smaller aircraft.

Some commenters noted that the price difference quoted in the rule between Mode S and ATCRBS transponders does not include data link and that there are very few or no advantages for a Mode S transponder without data link. The manufacturers' ability to produce basic, upgradable equipment, as expressed above, is expected to help resolve this problem.

With respect to the issue of basic Mode S advantages/disadvantages, the FAA recognizes that data link is a major benefit of equipping with a Mode S transponder. The agency also believes that most users will eventually opt to equip with data link. There are however, two basic advantages of Mode S transponders that accrue to users that derive from the capability to enhance ATC services. One is the unique address portion of the Mode S transponder which makes possible the automatic association and display of the transponder reply with aircraft registration on the ATC radar scope. The other is that when a Mode S transponder operates with a Mode S ground system, certain kinds of radio interference present in high-density traffic environments are reduced below the level experienced with an ATCRBS transponder. Not all of the garbling problems with the ATCRBS transponders and ATCRBS ground station can be eliminated by upgrading the ground station or the transponder.

There is also more to the cost issue when considered in conjunction with Mode S with data link capability. The FAA had considered a requirement that would have included some level of data link with every Mode S transponder, but rejected it for two reasons. First, the agency believes that most users desire that the device mandated by the rule be as simple as possible—a number of commenters obviously preferred a device even simpler than Mode S. Second, FAA believes that a rule mandating data link would unnecessarily limit the flexibility of manufacturers to develop a range of capabilities. That range might be described as follows. At bottom is the user who is aware of the benefit of improved ATC surveillance, but has no use for the kinds of information envisioned for data link. A middle range may be the visual flight rules (VFR) operator with a simple display device to obtain weather services through data link. At the top of the line, one might find a frequent instrument flight rules (IFR) operator needing display, a touch entry device, or even a printer to make a permanent record of data link messages to obtain weather and ATC services. By not making data link mandatory, the flexibility to meet these needs is retained as determined by the marketplace and designers' innovations.

Comment regarding negative cost effects of the Mode S proposal on the DOD was not submitted by the DOD, but by private citizens. The DOD did not reply to the NPRM during the comment period but has since advised that it concurs with the proposal. In any event, under the transponder installation requirements of § 91.24(a), the proposed Mode S requirements pertaining to transponder installations apply only to U.S.-registered civil aircraft.

b. Major issue number 2: the proposed installation schedule for Mode S transponders creates problems for avionics and aircraft manufacturers, airlines, and aircraft owners and operators. The major concerns expressed in this area were—

(1) Effects on avionics manufacturers. One of the proposal's alleged negative effects to avionics manufacturers was stockpiling. The NPRM proposed that an ATCRBS transponder could continue to be installed in a U.S.-registered civil aircraft after January 1, 1987, but only if it were manufactured before that date. Rockwell International commented that an effect of this requirement would be that manufacturers would have to stockpile ATCRBS transponders for 5 years (from January 1, 1987, to January 1, 1992). Stockpiling was also brought out by another commenter relative to the concerns expressed regarding production problems.

Another alleged negative effect to avionics manufacturers was that the proposal did not allow time which would be needed to design, develop, and produce Mode S transponders. Allied Bendix stated that the ATCRBS production must be moved closer to the January 1992 deadline. Since the typical product development cycle was said to be 18 to 24 months, Allied Bendix recommended that ATCRBS production cutoff for non-U.S.-registered civil aircraft should be 24 months prior to the Mode S implementation deadline. The ATCRBS production cutoff should than be December 31, 1989, if the January 1992 deadline were retained. Allied Bendix commented this would allow availability of equipment which incorporates the latest technology coincident with a market that would justify the investment required to introduce a new product. Otherwise, the company maintained it was left with the choice of either stockpiling ATCRBS transponders or foregoing this market opportunity.

In still another area of negative effect, a manufacturer said that because Mode S transponders would be more complex, they would be more expensive. Therefore, it would be more likely that ATCRBS transponders would be installed up to the 1992 deadline or until the supply of pre-January 1, 1987, transponders was depleted. A consequence of this would be that the onset of a general aviation market for Mode S transponders would be very uncertain.

(2) Effects regarding general aviation. There were several alleged negative effects of the proposal to general aviation, most of them associated with the cost/benefit issue. The NBAA maintained that owners in the lower-price end of the fleet would not equip with a transponder at all when faced with the unavailability of low priced ATCRBS transponders and no expectation of flying above 12,500 feet MSL or in TCA's.

On another related subissue, NBAA said that new hardware and software are 5 to 10 years in the future, and possibly even longer for the lower-price end of the general aviation market. Accordingly, the only foreseeable service that would convince the lower-price portion of the market to buy Mode S is improved real-time weather services.

Although not expressed in terms of specific effects to general aviation, the AOPA submitted several objections to the Mode S proposal questioning the value of Mode S primarily in terms of benefits and cost. In terms of benefits, AOPA submitted that while there may be some small incremental improvement in surveillance from use of Mode S, most, if not all, of the surveillance accuracy improvement will be attributable to the Mode S ground sensors and not the Mode S transponders. Accordingly, the FAA should permit sufficient time after Mode S ground sensors are operational for an objective evaluation of their value prior

to forcing an airborne transponder retrofit to achieve a marginal improvement in accuracy. AOPA's other concerns with the impact to general aviation owners/pilots were expressed in terms of cost. For example, AOPA reiterated the concern that Mode S transponder prices would be higher. As a result, purchases would be down, essentially freezing equipment levels in the low end of the fleet. These concerns are discussed under the cost issue above.

Comments of the SSA noted the effects of the proposal on general aviation with respect to consumer choice. SSA agreed with AOPA that service benefits of Mode S, rather than regulation, should be relied upon to motivate pilots to upgrade their equipment. Mode S services must be made available to general aviation aircraft operating below 10,00 feet MSL and not be reserved for jet-powered, high-altitude traffic. For this reason, Mode S should not be made mandatory after January 1, 1992. SSA concluded that ATCRBS should be permitted to be manufactured and installed as long as it does not interfere with either the surveillance system or services.

With respect to what was perceived as an unjustified installation requirement of Mode S transponders, the lack of consumer choice was an issue raised by two other commenters. One comment was that Mode S development will require at least 2 years from the availability of TSO-approved Mode S airborne equipment. The commenter referred to the NPRM which stated that only one Mode S ground radar is expected to be operational by 1988 at an unspecified location. Another commenter voiced a similar concern by saying that under the NPRM, users will be forced to equip with airborne Mode S before the ground stations can provide the same coverage as the older ATCRBS. The commenter's conclusion was that FAA's plan for forcing airborne Mode S equipage is premature.

(3) Effects on aircraft manufacturers. One commenter pointed out that because of technical parameters and data link capability, the Mode S transponder is not physically interchangeable with the ATCRBS transponder and, therefore, current aircraft designs cannot accept Mode S. The commenter suggested that new radio rack mounts, new control panels, new wiring, new cooling, and an additional antenna are needed to accommodate the new installation.

The problem facing manufacturers was also raised by several commenters as a retrofit problem for aircraft operators. Several commenters maintained that a formidable effect of the Mode S proposal would be the problem of retrofitting Mode S transponders in cockpits not adequately designed to accommodate the new equipment. One said that current aircraft designs do not accept Mode S. Installation design changes will be necessary and a development flight test will be required to assure antenna locations and operation characteristics are acceptable. Another suggested that retrofitting of older aircraft should remain voluntary except for aircraft operating in those areas where radar coverage is degraded by high-density traffic.

(4) Effects on airlines. The ATA advised that the proposed installation schedule would affect airlines. When a transponder is removed for maintenance, airlines routinely replace it with another unit and do not reinstall the same transponder equipment in the same aircraft each time.

The defective box is taken to the avionics shop for repair and subsequently installed in a different aircraft within the fleet. Under the proposed January 1, 1987, cutoff date associated with ATCRBS transponders, airlines would be required to retrofit all aircraft prior to the January 1, 1992, Mode S date.

Discussion of installation issues

The FAA believes that most of the concerns of and effects upon the avionics and aircraft manufacturers, owners/operators, consumers, and airlines can be alleviated by—

(a) changing the last manufacturing cutoff date for ATCRBS transponders which may be installed in U.S. aircraft from December 31, 1986, to December 31, 1989. The additional three years will provide an extended time period within which affected users may effectively plan for transition from ATCRBS to Mode S;

(b) modifying the installation requirements so that—

(1) a transponder that meets requirements of TSO C74b or TSO 74c, and that is manufactured before January 1, 1990, may be removed from an aircraft for maintenance and/or repair, and then be reinstalled on the aircraft from which it was removed. Also, a correctly functioning transponder which meets the requirements of the appropriate TSO may be installed on the aircraft temporarily while the malfunctioning transponder is being repaired.

(2) for fleet operations, a transponder that meets the requirements of TSO C74b or TSO C74c may be removed from an aircraft for maintenance and/or repair, and then be installed on either the aircraft from which it was removed or on another aircraft in the same fleet. Equipment transferred among fleet aircraft will be considered permanent equipment and not "substitute equipment" under the provision for temporary replacement sets. Accordingly, any equipment installed for the first time in an aircraft of a particular operator's fleet after January 1, 1992, must meet the requirements of TSO–C112 (Mode S).

The FAA believes that the above changes to the installation requirements which appear in the final rule may be expected to:

(i) Eliminate the problem of stockpiling.

(ii) Clarify onset of a Mode S market.

(iii) Allow time for aircraft manufacturers to ensure that new aircraft designs provide adequate space, wiring, etc., to accommodate Mode S equipment; and

(iv) Allow time for operators/consumers to plan for retrofitting which is not mandatory but which could take place in the 1990's as owners/operators consider replacement of ATCRBS transponders.

With respect to the issue of the reluctance to install a Mode S transponder because of associated increased costs, the FAA views as insignificant any disincentive to buy a Mode S transponder because a basic unit costs more than it does today. Most voluntary transponder equippage is due to the perceived benefit in obtaining ATC services. Those services will continue and will be enhanced with Mode S. We believe that users will see that cost as being justified. If some users do not see it as being justified, the rule provides ample time for low end users to equip with ATCRBS transponders, the life of which should extend to near the end of the century.

The proposed rule did not expressly provide for the use or installation of ATC transponders which were manufactured under TSO–C74 or TSO–C74a. The existing rule requires that transponders installed after January 1, 1974, or used after July 1, 1975, meet the requirements of TSO–C74b or TSO–C74c. However, the use of the TSO–C74 and TSO–C74a equipment after July 1, 1975, could be approved by the Administrator if the operator submitted data showing that the equipment met the performance standards of the appropriate class of TSO–C74c and environmental conditions of the TSO under which it was manufactured.

Any equipment which qualified under this provision would be more than eleven years old at this time. While the

rule adopted does not make specific provision for such equipment, the FAA will permit the continued use of any equipment manufactured under TSO–C74 or C–74a, if still in use, if that equipment meets the performance standards of TSO–C74c and the environmental standards of the TSO under which it was manufactured.

c. Major issue number 3: Data link services to be available are indefinite; they lack FAA commitment; operators do not know what data link services will be available nor when. Uncertainty in this area is also likely to be costly to consumers faced with a decision to purchase Mode S transponders (the latter part of this issue is discussed under the cost issue).

Several commenters noted that the FAA made no commitment in the proposal to data link applications, even though data link was put forth as one of the basic benefits to come from the Mode S transponder. Moreover, to obtain the benefits of data link, more equipment would be required, e.g., displays, printers, and input/output devices. This leads to cost and retrofitting problems. The AOPA commented that any forced transition to Mode S transponders should begin only after the FAA, in concert with the aviation user community, has decided what services will be provided on the data link and has created a plan which ensures that investments in equipment to obtain those services will be justified.

Discussion of the data link issue

While the FAA has not to date issued any rulemaking or technical standards specifically relating to data link, the agency is now engaged in preparation of a data link master plan and the development of a data link program. The FAA expects that informational data link services will be available within a year of the first operational Mode S sensors. In addition, the FAA agrees that there is a need to stimulate aircraft owners to purchase Mode S transponders by accelerating date link development. Data link development to date has been system oriented and has concentrated on the NAS components that are necessary for date link. Agency personnel are meeting with user groups to develop implementation priorities and a schedule which is compatible with the Mode S transponder rule schedule.

With regard to the products and services that the FAA expects to have available for users, the FAA objectives are to—

(a) Develop and implement data link applications which improve aviation safety and efficiency and stimulate Mode S transponder equipage;

(b) Provide data link services at the earliest date the equipment and data base availability permit; and

(c) Provide a focal point for all domestic and international aviation data link standards.

Weather information is currently scheduled to be the first data base available. Therefore, weather services are expected to be the first group of services offered using Mode S data link. The initial set of potential services within this group are terminal forecasts, surface observations, Automated Surface Observation System data, Automated Weather Observing System data, winds aloft forecasts, pilot reports, radar summaries, and hazardous weather advisories. The initial implementation of these services may be on a request/reply basis. As the system matures, these services can be provided to a pilot in a more automated manner.

The second group of potential services expected to be available are expanded weather and airport services. These include the Automated Terminal Information System, wind shear alerts, and runway surface winds.

The third group of potential applications expected to be available are initial ATC services. These applications include transfer of communications, altitude assignment confirmation, flight identification, minimum safe altitude warning, traffic information, and uplinking of aircraft position data.

The fourth group of potential applications expected to be available are dependent on the implementation of the advanced automation system. These applications include en route metering, automatic flight service hazardous weather, weather graphics, and clearance delivery.

Each of the above groups of services depends upon specific equipment and data base availability. The indicated order of group implementation reflects the current FAA schedules. The implementation schedule of a data link application within a group depends upon its acceptance by the users and the maturity of the concept. One of the data link program objectives is to provide the greatest number of data link services in the shortest time span.

In regard to the issue of requiring data link, the FAA had considered specifications that would have required some level of data link with every Mode S transponder, but rejected it for two reasons. The basis for rejection was that most users desire the simplest device possible; and secondly, FAA believes that a rule mandating data link would unnecessarily limit the flexibility of manufacturers to develop a range of capabilities that was described under discussion of the cost issue. In consideration of manufacturers' opinions in this area, the FAA has retained the manufacturers' flexibility to meet these needs in accordance with the marketplace and product innovations and not by regulation.

Discussion of other issues

Issue number 1: The need for automatic pressure altitude reporting equipment.

The NPRM proposed an effective date for requiring Mode C equipment in Group II TCA's of January 1, 1992. For reasons discussed below, the FAA has adopted an effective date in the final rule of December 1, 1987. The basic justification for extending the requirement to Group II TCA's remains the same. The comments which addressed the Mode C issue focused on the need for Mode C in Group II TCA's and on the inclusion of Mode S and Mode C requirements in the same rule, but not on the implementation date for the Mode C requirement.

AOPA opposed the use of Mode C in Group II TCA's saying the FAA had not provided a rationale for extending the use of Mode C transponders to additional airspace. AOPA believes there is little evidence to show that it can help to improve ATC system safety and challenged FAA claims that Mode C would increase ATC effectiveness through greater selectivity in viewing targets or that it would reduce the number of traffic advisories or avoidance vectors. AOPA said that TCA's should be considered individually, and rulemaking action should be taken if it becomes clear that a location warrants such exclusionary provisions based upon traffic volume, complexity, aircraft mix, controller workload, and frequency congestion.

In another view, two commenters said that it would be inappropriate to include two complex issues in one rule, and that Mode S and Mode C should be handled by separate rulemakings.

The FAA does not agree that the use of Mode S transponders and automatic pressure altitude reporting equipment should be separate rulemaking actions. The required use of altitude reporting equipment in Group II TCA's is not a separate issue; rather, it is an extension of its current application in Group I TCA's and above 12,500 feet MSL. Neither can its use be regarded as separate and unrelated to the use of Mode S transponders since its use will logically be required in the same airspace areas where Mode S transponders will be required.

Automatic pressure altitude reporting equipment has been required and has been in proven use in conjunction with ATC transponder equipment in Group I TCA's and above 12,500 feet MSL since 1973. The equipment has been used to provide essential aircraft identity, location, and altitude information in those airspace areas where such information provides a fundamental base in providing airspace users safe, orderly, and efficient use of available airspace.

Experience has shown that Mode C has been particularly beneficial in the higher density TCA airspace environment. It was in consideration of this environment that Task Group 1–2.1 of the National Airspace Review (NAR) recommended use of Mode C to reduce radio frequency congestion. The task group's rationale, as stated in Notice 85–16, was that this reduction was necessary to create more efficiency within the system thereby increasing capacity while providing an increased level of safety over operations with non-Mode C aircraft. In particular, the group pointed to weather conditions which cause pilots of VFR aircraft to change altitude to maintain appropriate separation from clouds. In a high density environment, this altitude change is not immediately forwarded to the controller. However, the Mode C readout on the controller's radar display does provide this information. The task group's conclusion was that in busy, complex areas with high concentrations of traffic, a continuous readout of aircraft altitude is a necessity for maintaining a continuous three-dimensional (range, azimuth, altitude) view of the traffic picture.

The FAA concurs with the finding of the NAR task group. The FAA also recognizes that the NAR task group envisioned use of Mode C equipment within a single class of TCA whose proposed establishment criteria were somewhat lower than current Group I TCA criteria and somewhat higher than current Group II criteria. Although the NAR task group related the Mode C requirements to a single class of TCA, the FAA expects similar benefits from use of Mode C in the airspace environment of today's current Group II TCA's. That environment is examined in more detail below.

The designation of a terminal area as a Group II TCA indicates that it is a higher density terminal area which presents complex air traffic conditions resulting from a mix of large turbine-powered air carrier aircraft with other aircraft of varying performance characteristics. There is no reason to believe that the complex nature of a high-density environment, as typified by a Group II TCA, will be altered by slower than expected growth in traffic or even the unlikely event of a sustained static level of traffic into the next decade and beyond. The requirements of the Group II TCA are basic to that environment and they are essentially common to the requirements of a Group I TCA. Furthermore, the requirements are generic in the sense that they could apply to any classification of airspace with similar characteristics. They are requirements designed to affort the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service to minimize the hazardous mix of controlled and uncontrolled aircraft.

The amendment adopted prohibits operation in a Group II TCA without operating Mode C equipment, effective December 1, 1987. The requirement adopted is the same as that proposed in the NPRM except for the earlier implementation date. In consideration of the benefits of having each aircraft in TCA airspace equipped with Mode C, as discussed immediately above, the FAA believes that this requirement should not be postponed to 1992 as originally proposed. In addition, one or more other rulemaking projects under consideration by the FAA at this time would almost certainly have the effect of requiring Mode C in Group II TCA's long before January 1, 1992. These actions include:

—The establishment of a single category of TCA, in which Mode C would be required. This action was recommended by the NAR and also by a TCA Review task group established by the FAA in September 1986, and is part of the airspace reclassification rulemaking now in progress (FAA Docket No. 24455, 50 FR 5055; Docket No. 24456, 50 FR 5046, February 5, 1985).

—The requirement for use of a traffic alert and collision avoidance system (TCAS). The FAA has announced its intention to issue an NPRM by November 1987 proposing to require the installation and use of TCAS equipment by certain operators. The TCAS II system to be proposed will issue traffic alerts for conflicting aircraft equipped with transponders, but will issue conflict resolution advisories only for aircraft equipped with Mode C.

Also, the FAA has received separate petitions for rulemaking, from the Air Line Pilots Association and the Air Transport Association, requesting that the requirements for Mode C equipment be extended to additional terminal areas and other airspace. The FAA has not acted on either petition at this time. Finally, language included by the House Committee on Appropriations in the report on a recent spending resolution (H.J. Res. 730) stated the committee's intent that the FAA substantially expand the airspace in which Mode C equipment is required.

Requiring Mode C equipment in Group II TCA's effective December 1, 1987, rather than January 1, 1992, advances the date by which some operators must acquire Mode C but does not otherwise alter the requirement proposed in the NPRM. The equipment required is common avionics equipment now installed on the aircraft used by most Part 121 and Part 135 operators and many general aviation operators. An adjustment in the implementation date from 1992 to 1987, therefore, does not present any new issues with respect to availability of equipment or costs to operators.

In summary, the FAA believes the benefits of a Mode C requirement in Group II TCA's clearly support the implementation of that requirement at the earliest practical time. An effective date of December 1, 1987, will provide affected operators sufficient time to acquire the Mode C equipment if necessary. The issues related to the expanded Mode C requirement were presented and discussed in the NPRM and the comments received, and the agency has determined that further notice is not required.

Issue number 2: There has been a decline in aviation growth that does not bear out NAS estimates and which makes the mandating of Mode S transponders unnecessary. AOPA said it is clear that the traffic projections upon which the NAS Plan was based in 1980 substantially exaggerate the growth and density of aircraft in the U.S. fleet. The increases suggested will not happen, and any transponder mandate based on those forecasts is misguided at best.

The initial estimate that 19.9 billion in cost savings or benefits over the years 1981–2000 is expected to result from NAS improvements was derived on the basis of a 1981 equivalent system. In other words, the improvements of the NAS were quantified by estimating the cost savings expected to result from a reduction in delays, improved fuel-efficient routing, reduced accidents, and reduced operating and maintenance costs, using as a baseline for comparison the higher expected costs of operating and maintaining the 1981 system in a manner to provide the same level of service to more aircraft. The extent of these benefits was estimated on the basis of the projected increase in traffic levels over the years 1981–2000, which in turn are based on projected increases in the active fleet. The benefits of Mode S estimated in the

initial economic evaluation were based on fleet projections made in early 1985 rather than in 1980–81, as the commenter apparently believes was the case. The 1987 projection, which was just released, takes account of declining production trends in general aviation aircraft over the past 5 years as it forecasts a total of 219,300 airplanes in this category as of the year 1998, which is about 40,000 lower than last year's projection. The 1986 estimate of NAS improvement benefits has been reduced to 16 billion mainly to reflect the lower forecasts of aviation activity. The reduction in the fleet of about 15 percent is considerably less than the 50 percent decrease cited by one commenter and has had a proportionately smaller downward effect on the magnitude of expected benefits. In any case, the benefits of an upgraded NAS that were estimated 1 year ago are likely to be realized eventually even if the underlying forecast may have been too optimistic, because the total civil aviation fleet is still expected to increase over the foreseeable future if at a slower pace.

Issue number 3: There are deficiencies and problems with transponder tests. Several concerns were raised in this area. One commenter said there would be increased reliance placed on future transponders, especially on data link; therefore, there is a question whether the frequency with which ATC transponders are required to be tested is adequate.

In reference to the proposed additional testing of transponder output power, another commenter said that unless the FAA can demonstrate that inadequate output from current transponders is causing a degradation in system performance, this part of the rule should not be adopted.

AOPA stated that while it supports the transponder test requirements, the length of time between inspection and test could easily be extended from 24 to 36 months. Inspections conducted at that interval would assure proper operation, but would offset the increased cost of performing the more complex tests both for Mode S and ATCRBS devices.

The current transponder tests and inspection requirement are based on the experience gained with the ATCRBS transponders. At this time, the FAA has no data to substantiate either increasing or reducing the frequency of transponder tests and inspections. Prior to the implementation of the data link, the FAA expects sufficient experience with the Mode S transponder to determine if the frequency of testing should be changed.

The FAA believes that the additional testing of the transponder output power is necessary because it is obvious that inadequate output from transponders degrades the air traffic control system performance. If a transponder does not have sufficient output power to respond to an interrogation, the ATC system does not obtain identification of the aircraft.

The FAA does not concur with the AOPA suggestion that the length of time between inspection and tests could be extended from 24 to 36 months. The FAA has no data to support such a change. Older transponders, without solid-state output, tend to degrade in performance over time. Increasing the length of time between tests and inspection could result in some transponders being out of tolerance for longer periods of time.

Issue number four: There are performance weaknesses and deficiencies associated with Mode S, data link, and Mode C altitude reporting equipment.

Commenters alleged several technical deficiencies and weaknesses with the equipment with respect to both Mode C and Mode S equipment. One commenters said that the current trend to monopulse secondary surveillance radar (SSR)/monopulse ATCRBS may be jeopardized by the addition of any form of Mode S transponders in the airspace using the same ICAO radio channels, because, according to an in-depth British study, angular errors will increase. Another commenter said the Mode S proposal includes the likelihood of a degradation of the primary function of the radar beacon system in its mission of air traffic monitoring and ATC operations. The data rate of message exchanges is restricted by the radar antenna sweep rate which will limit message exchange windows to 120 milliseconds duration at 12 second intervals for en route and 40 milleseconds for terminal radars. Another commenter believes the FAA should defer the Mode S issue until it is proven that the ATCRBS/SSR Mode C, using monopulse techniques now being developed in Europe in the interest of greater accuracy, can no longer meet the national ATC needs.

Concerning the accuracy of Mode C altitude reporting equipment, AIA stated that there is a major problem with altitude reporting accuracy that has not solved by Mode S; i.e., barometric altitude. Another commenter recommended that the FAA undertake, on a high priority basis, a research and development project to develop an accurate altimetry system to ensure that altitude reports by either ATCRBS or Mode S users will in fact be accurate altitudes. The commenter went on to say that to mandate a whole new system based on present altimetry techniques is premature and a shameful waste of money.

With respect to data link, one commenter maintained that data link hardware for the cockpit is yet to be determined. The packaging and human factors features are not specified. Manufacturers must determine how data will be uplinked and downlinked. Questions remain unanswered. In slightly different language, the ATA said that even though the characteristics of the Mode S transponder are reasonably well defined, the extent to which the data link functions may impact the hardware design is less clear. ATA concluded that it seems appropriate that FAA adjust the dates for transition to Mode S until the airborne architecture for Mode S data link has been firmed up.

Concern regarding need for improved accuracy of altitude data and improved automatic pressure altitude reporting equipment was one of the issues to surface from the original ANPRM. As stated in the NPRM and repeated earlier in the preamble to this rule, the FAA agreed there would be benefits from greater precision in automatic altitude reporting. However, this increased precision would require separate development of the associated technology and procedures. In each case, the FAA would seek public and industry input on the specific proposal. This continues to be the agency position on this issue. Also, in accordance with the previous position on this matter, the FAA believes the existing equipment and procedures are fully adequate to support additional reporting requirements proposed in this notice. The agency will consider the institution of separate rulemaking in the future for adoption of the requested improvements.

The introduction of Mode S transponders is not expected to affect adversely the introduction of monopulse ATCRBS or the angular measurement accuracy of air traffic monitoring operations. The compatibility of ATCRBS with present and future enhancements was considered by the International Civil Aviation Organization (ICAO) in its Secondary Surveillance Radar (SSR) Improvements and Collision Avoidance System Panel (SICASP). The panel approved a recommendation at its first meeting recognizing that compatibility had been demonstrated to exist between Mode S and ATCRBS. The panel further

recommended that ICAO ensure the maintenance of compatibility of future SSR enhancements in the formulation of standards relating to these enhancements. The recommendation was subsequently accepted by ICAO.

With regard to data link concerns, the FAA believes that the revised Mode S installation schedule will also help provide for a longer transition period to develop and test equipment and procedures, validate benefits, and implement associated data link applications and procedures. Concerns regarding the uses, systems, practices, or procedures involving data link will be addressed through the appropriate procedures of FAA's data link program as evaluation data becomes available. These concerns therefore will not be addressed here since they are beyond the scope of this rule which is limited to the use, testing, and installation of ATCRBS/Mode S transponders.

Issue number 5: Use of Mode S with data link would create a "silent" environment, as opposed to today's "party line" voice communications environment.

According to one commenter, a silent environment is hazardous to flight safety. The commenter said the silent nature of the Mode S data link can lead to sending a message in error which, if undetected, can lead to a fatal accident. Currently, all pilots hear ATC instructions to all other proximate pilots and can catch inconsistent instructions to different aircraft in the same area. The party line would be lost if this rulemaking takes effect.

Contrary to the commenter's perception, the "party line" would not be lost as a result of this rulemaking. Though presented as a major benefit, data link is not being mandated by this rule. This same concern was expressed in response to the original ANPRM and responded to in the subsequent NPRM. These concerns were considered to be well beyond the scope of the NPRM. The FAA stated in the NPRM that in its implementation of data link, it would involve the public in its studies of all factors associated with each kind of message being considered for data link. This continues to be the FAA's position. The FAA recognizes there are advantages and disadvantages to both the party line and data link messages. The benefits to any data link service must outweigh the disadvantages before implementation. One of the objectives of the FAA's data link applications program will be to investigate the feasibility and desirability of providing some of the "party line" information which currently serves to congest voice frequencies over data link. Frequency changes are an example. If frequency changes were removed, voice channels are expected to be less congested, providing more time for users to better monitor other party line information.

Issue number 6: The Mode S requirements may adversely affect DOD fighting capability.

Two commenters believed that the DOD's fighting capability would be diminished by the Mode S rule. The impact of the Mode S transponder rule on the DOD was discussed earlier in this preamble under the major issue of cost. In that discussion, it was stated that comment regarding negative cost effects of the Mode S proposal on the DOD was submitted by private citizens. Even though the proposal did not apply to military aircraft, the DOD has advised the FAA that it concurs with the proposal and is voluntarily incorporating Mode S in its Mark XV transponder. In summary, the DOD has expressed no concerns that mandating Mode S transponders would adversely affect its mission.

Issue number 7: The U.S. may be breaking ICAO agreements if it issues a rule without international approval.

A commenter said that it appears from study of the ICAO charter, to which the U.S. has agreed, that no nation will unilaterally impose rules regarding avionics in its airspace which is available via bilateral ICAO agreement with at least 50 other nations. Another commenter stated that the U.S. should defer implementation of a Mode S requirement until there is full agreement in the ICAO that Mode S is essential and that states are permitted to mandate its use for aircraft of all nations. The U.S. cannot afford an ICAO confrontation.

In regard to the ICAO issue—

(a) There will be no conflict with ICAO. The installation requirement pertains only to U.S.-registered civil aircraft.

(b) If ICAO believes Mode S is unnecessary, it may consult with the U.S., possibly through SICASP, and make a recommendation.

Issue number 8. Issuance of Mode S requirements prior to issuance of the Mode S Technical Standard Order is premature. This point was made by seven commenters before the December 16 comment deadline date for the Mode S NPRM. At that time, the FAA had not as yet issued a Mode S TSO. However, on February 5, 1986, the FAA issued the Mode S TSO, TSO–C112, "Air Traffic Control Radar Beacon System/Mode Select (ATCRBS/Mode S) Airborne Equipment."

Economic Evaluation

The following is a summary of the regulatory evaluation associated with this rule. The complete evaluation is in the public docket for inspection.

This rule involves some costs and benefits. There are three aspects of the rule which may have potential economic impacts:

1. The requirement for use of automatic pressure altitude reporting equipment in Group II TCA's after December 1, 1987.

2. The basic Mode C and Mode S transponder and maintenance requirements.

3. The change to maintenance tests for the ATCRBS transponder.

Group II TCA Requirement

The proposal for altitude reporting equipment within Group II TCA's has an effective date of December 1, 1987. Current regulations require only a 4096 code transponder (ATCRBS) within Group II TCA's. The basic transponder does not have the automatic altitude reporting capability associated with Mode C, which is an add-on piece of avionics compatible with nearly all transponders currently in use. There has been a steady trend toward increased equipage in the general aviation fleet with both ATCRBS transponders and Mode C capability over the past decade. FAA national data reveal that by 1984, about 80 percent of the general aviation (including the commuters and air taxies) was equipped with an ATCRBS transponder and that about one-half of these transponders had Mode C capability. In estimating the cost of this new requirement, the FAA assumed that only those aircraft which presently operate in Group II TCA's and are not equipped with Mode C would be affected. The FAA determined that the cost (discounted) of equipping the 2,368 aircraft that would be affected by this requirement would amount to $1.9 million. In addition, the incremental testing costs associated with Mode C are expected to amount to about $333,500 over the next five years. None of the major air carriers would be affected by this requirement.

There are safety and efficiency benefits associated with the proposal, but they are not quantifiable. Those benefits would result from improved aircraft control within Group II TCA's. Although there is no realistic method for allocating a portion of the overall NAS benefits ($16 billion) to the Mode C regulatory proposal, one can reasonably conclude that the likely benefits would far exceed the associated one-time costs

of $1.9 million and recurring cost of $335,000 in view of the central role envisioned for Mode C in the overall NAS Plan.

Mode S Transponder Requirements

The regulatory cost of the Mode S proposal can be developed by estimating Mode S installations and multiplying this forecast by an estimate of the net cost of compliance.

Forecast of Installations

Installations of Mode S transponders are forecast to begin in 1988, with only 10 percent of new installations being Mode S that year, but increasing to 100 percent in 1992. Total transponder installations are estimated as the net annual increase in active aircraft in forecast years, plus 3 percent of the previous year's active aircraft. Using FAA forecasts for future years (FAA Aviation Forecast, February 1987), installations of Mode S transponders would exceed 6,000 in 1992 and average approximately 6,500 a year for the decade from 1991 to the year 2000.

Net Cost of Installation

The added cost per unit for a Mode S transponder, compared to projected transponder equipage in the absence of this regulation, is expected to be approximately $600, installed. This cost estimate assumes installation of a Mode S surveillance transponder with data link connectors, but not the cost of data link processing or display capability. Data link capability could be integrated into the transponder or added later. The price for a Mode S transponder will be about $1,000 more than for an ATCRBS Transponder for about 4 years to account for recovery of development costs.

Based on these assumptions, the regulatory cost of the Mode S proposal for the period 1988 thru 2000 is $21.2 million on a discounted cost basis.

Benefits of Mode S

Mode S is a major component of the NAS Plan. There are many benefits of Mode S, and all are associated with the benefits of the NAS Plan implementation. The benefits of the NAS Plan implementation have been estimated at almost $16 billion in cost savings through the year 2000, due to system operations and maintenance costs, as compared to the "1981 equivalent" systems. There is no reasonable way to allocate a portion of the overall NAS benefits to the Mode S regulatory proposal, but Mode S is considered necessary to successful implementation of the NAS Plan.

Transponder Maintenance Tests

There are additions to Appendix F of Part 43 which provide for tests appropriate for Mode S tranponders. There is also an added power output test required for ATCRBS transponders. This test should not involve significant additional costs. The Mode S inspection costs are expected to be moderately higher. Assuming the cost of the Mode S biennial test will be moderately higher than today's tests, any offsetting benefits are in the same general category of general NAS benefits and cannot be specifically allocated to Mode S.

Conclusion

Estimated costs of the Mode C requirement in Group II TCA's are $1.9 million for equipment and approximately $333,500 over the next five years for testing. Estimated cost of the Mode S transponder requirement from the year 1988 through the year 2000 is $21.2 million on a discounted cost basis. Additional costs of required periodic testing of the Mode S transponder will not be significant. The benefits of the Mode C, Mode S, and associated testing requirements adopted in this rule are difficult to quantify, but all are essential components of the NAS Plan. Implementation of the Plan is estimated at almost $16 billion in cost savings through the year 2000. In addition, if one midair collision involving a medium size airliner is prevented by any of the requirements adopted, the additional benefit would be approximately $61,508,000 on a discounted cost basis (based on an accident involving 110 fatalities). Therefore, the FAA has concluded that the benefits of the rules adopted substantially exceed the regulatory costs of those rules.

For the reasons set forth in the above regulatory evaluation summary, the FAA has determined that the rule does not involve a major rule under Executive Order 12991. The Department of Transportation has determined that the rule is considered a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the Regulatory Evaluation prepared for this action is contained in the regulatory docket, and a copy may be obtained by contacting the person identified under the caption, **"FOR FURTHER INFORMATION CONTACT."**

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress in order to insure, among other things, that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant impact on a substantial number of small entities." For purposes of RFA, small entities are considered to include small businesses, non-profit organizations, and municipalities but not private individuals. As discussed above under "Economic Evaluation," the FAA concludes that the number of small entities affected by this rule will not be substantial in relation to all aviation-related small entities. In addition, the impact on most such small entities will be substantially less than the threshold for significant impact under agency guidelines. Therefore, I certify that, under the criteria of the Regulatory Flexibility Act, this rule will not have a significant impact on a substantial number of small entities.

Summary of FAA Actions

Consistent with FAA's plan to modernize the NAS, and the planned role of the Mode S surveillance system in the NAS, the FAA is taking or has taken the following actions:

1. *Issue a TSO for airborne Mode S Transponder.* Concurrently, TSO authorization to manufacture ATCRBS transponders will continue in effect. The intent of continuing the ATCRBS TSO is to allow continued manufacture of ATCRBS transponders for foreign sale and for installation in aircraft destined for foreign countries and to accommodate the DOD.

Issuance of the TSO's is not accomplished through rulemaking and, therefore, the Mode S TSO is not a regulatory portion of this rulemaking package. However, consistent with FAA practice, the proposed TSO for Mode S was made available for public comment. All issues generated by public comment were resolved and TSO–C112 was issued February 5, 1986.

2. *Amend the FAR.* The following changes to the FAR are adopted by this amendment:

FAR Part 43, Appendix F. ATC transponder test and inspection requirements apply to both ATCRBS and Mode S transponders. Test areas include radio reply frequencies, suppression, receiver sensitivity, radio frequency, and output power. Those tests applicable only to Mode S transponders include Mode S diversity transmission channel isolation, Mode S address, Mode S formats, Mode S all-call interrogations, ATCRBS-only all-call interrogations, and squitter. The reference to § 91.177 is corrected to refer to § 91.172. The existing requirement for recordkeeping will be retained.

FAR Part 91, Section 91.24(a). For operations not conducted under Parts 121, 127, or 135, ATC transponder equipment installed (or in fleet operations, equipment introduced into the fleet inventory) within specific time periods must meet the performance and environmental requirements of the TSO's specified in the rule. The requirement to meet the Mode S TSO after January 1, 1992, does not apply to—

(a) A transponder which met the requirements of the rule when originally installed, and which is removed from an aircraft for maintenance and then reinstalled on the aircraft from which it was removed.

(b) A transponder which meets the requirements of TSO C74b or TSO C74c and is temporarily installed on an aircraft when the permanent transponder is removed for maintenance.

(c) A transponder which met the requirements of the rule when originally installed in a fleet aircraft, which is removed from the aircraft for maintenance/repair, and which is then installed on either the aircraft from which it was removed or on another aircraft in the same fleet.

Section 91.24(b). All aircraft operated in the airspace areas below are required to have either a combination ATCRBS or Mode S transponder and automatic pressure altitude reporting equipment. The new requirement applies as follows:

1. in Group I TCA's;
2. in Group II TCA's; and
3. in all controlled airspace of the 48 contiguous States and the District of Columbia, above 12,500 feet MSL, excluding the airspace at and below 2,500 feet AGL.

Automatic pressure altitude reporting (Mode C) equipment is required in Group II TCA's.

Exceptions to the rule are as follows:

1. Operations of helicopters in TCA's at or below 1,000 feet AGL under a letter of agreement.

2. Operations of gliders above 12,500 feet MSL but below the floor of positive control area.

No Group III TCA's exist or are planned.

An editorial change has been made to substitute the word "operating" for the word "operable" in § 91.24(b). Substitution of the word "operating" for the word "operable" is made to reflect the requirement that transponders must be turned on.

Section 91.90(b)(2)(iii). Aircraft operating in Group II TCA's are required to be equipped with automatic pressure altitude reporting equipment effective December 1, 1987.

The following FAR sections are amended to make transponder requirements under those sections consistent with the amended transponder installation requirements of Part 91:

1. FAR Part 121, § 121.345(c);
2. FAR Part 127, § 127.123(b); and
3. FAR Part 135, § 135.143(c).

List of Subjects

14 CFR Part 43

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 91

Aviation safety, Safety, Aircraft, Air traffic control, Pilots, Airspace, Air transportation, Airports.

14 CFR Part 121

Aviation safety, Safety, Air traffic control, Air transportation, Aircraft, Airplanes, Airports, Airspace, Transportation.

14 CFR Part 127

Aircraft, Airworthiness, Air traffic control, Helicopters, Airspace.

14 CFR Part 135

Aviation safety, Safety, Air transportation, Airworthiness, Aircraft, Transportation, Helicopters, Air traffic control, Airspace, Airplanes.

Adoption of the Amendments

For the reasons set forth above, Parts 43, 91, 121, 127, and 135 of the Federal Aviation Regulations (14 CFR Parts 43, 91, 121, 127, and 135) are amended as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING AND ALTERATION

1. The authority citation for Part 43 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Appendix F to Part 43 is revised to read as follows:

Appendix F—ATC Transponder Tests and Inspections

The ATC transponder tests required by Section 91.172 of this chapter may be conducted using a bench check or portable test equipment and must meet the requirements prescribed in paragraphs (a) through (j) of this appendix. If portable test equipment with appropriate coupling to the aircraft antenna system is used, operate the test equipment for ATCRBS transponders at a nominal rate of 235 interrogations per second to avoid possible ATCRBS interference. Operate the test equipment at a nominal rate of 50 Mode S interrogations per second for Mode S. An additional 3 dB loss is allowed to compensate for antenna coupling errors during receiver sensitivity measurements conducted in accordance with paragraph (c)(1) when using portable test equipment.

(a) Radio Reply Frequency:

(1) For all classes of ATCRBS transponders, interrogate the transponder and verify that the reply frequency is 1090±3 Megahertz (MHz).

(2) For classes 1B, 2B, and 3B Mode S transponders, interrogate the transponder and verify that the reply frequency is 1090±3 MHz.

(3) For classes 1B, 2B, and 3B Mode S transponders that incorporate the optional 1090±1 MHz reply frequency, interrogate the transponder and verify that the reply frequency is correct.

(4) For classes 1A, 2A, 3A, and 4 Mode S transponders, interrogate the transponder and verify that the reply frequency is 1090±1 MHz.

(b) Suppression: When Classes 1B and 2B ATCRBS Transponders, or Classes 1B, 2B, and 3B Mode S transponders are interrogated Mode 3/A at an interrogation rate between 230 and 1,000 interrogations per second; or when Classes 1A and 2A ATCRBS Transponders, or Classes 1B, 2A, 3A, and 4 Mode S transponders are interrogated at a rate between 230 and 1,200 Mode 3/A interrogations per second:

(1) Verify that the transponder does not respond to more than 1 percent of ATCRBS interrogations when the amplitude of P_2 pulse is equal to the P_1 pulse.

(2) Verify that the transponder replies to at least 90 percent of ATCRBS interrogations when the amplitude of the P_2 pulse is 9 dB less than the P_1 pulse. If the test is conducted with a radiated test signal, the interrogation rates shall be 235±5 interrogations per second unless a higher rate has been approved for the test equipment used at that location.

(c) Receiver Sensitivity:

(1) Verify that for any class of ATCRBS Transponder, the receiver minimum triggering level (MTL) of the system is −73±4 dbm, or that for any class of Mode S transponder the receiver MTL for Mode S format (P6 type) interrogations is −74±3 dbm by use of a test set either:

(i) connected to the antenna end of the transmission line;

(ii) connected to the antenna terminal of the transponder with a correction for transmission line loss; or

(iii) utilized radiated signal.

(2) Verify that the difference in Mode 3/A and Mode C receiver sensitivity does not exceed 1 db for either any class of ATCRBS transponder or any class of Mode S transponder.

(d) Radio Frequency (RF) Peak Output Power:

(1) Verify that the transponder RF output power is within specifications for the class of transponder. Use the same conditions as described in (c)(1) (i), (ii), and (iii) above.

(i) For Class 1A and 2A ATCRBS transponders, verify that the minimum RF peak output power is at least 21.0 dbw (125 watts).

(ii) For Class 1B and 2B ATCRBS Transponders, verify that the minimum RF peak output power is at least 18.5 dbw (70 watts).

(iii) For Class 1A, 2A, 3A, and 4 and those Class 1B, 2B, and 3B Mode S transponders that include the optional high RF peak output power, verify that the minimum RF peak output power is at least 21.0 dbw (125 watts).

(iv) For Classes 1B, 2B, and 3B Mode S transponders, verify that the minimum RF peak output power is at least 18.5 dbw (70 watts).

(v) For any class of ATCRBS or any class of Mode S transponders, verify that the maximum RF peak output power does not exceed 27.0 dbw (500 watts).

Note: The tests in (e) through (j) apply only to Mode S transponders.

(e) Mode S Diversity Transmission Channel Isolation: For any class of Mode S transponder that incorporates diversity operation, verify that the RF peak output power transmitted from the selected antenna exceeds the power transmitted from the nonselected antenna by at least 20 db.

(f) Mode S Address: Interrogate the Mode S transponder and verify that it replies only to its assigned address. Use the correct address and at least two incorrect addresses. The interrogations should be made at a nominal rate of 50 interrogations per second.

(g) Mode S Formats: Interrogate the Mode S transponder with uplink formats (UF) for which it is equipped and verify that the replies are made in the correct format. Use the surveillance formats UF=4 and 5. Verify that the altitude reported in the replies to UF=4 are the same as that reported in a valid ATCRBS Mode C reply. Verify that the identify reported in the replies to UF=5 are the same as that reported in a valid ATCRBS Mode 3/A reply. If the transponder is so equipped, use the communication formats UF=20, 21, and 24.

(h) Mode S All-Call Interrogations: Interrogate the Mode S transponder with the Mode S-only all-call format UF=11, and the ATCRBS/Mode S all-call formats (1.6 microsecond P_4 pulse) and verify that the correct address and capability are reported in the replies (downlink format DF=11).

(i) ATCRBS-Only All-Call Interrogation: Interrogate the Mode S transponder with the ATCRBS-only all-call interrogation (0.8 microsecond P_4 pulse) and verify that no reply is generated.

(j) Squitter: Verify that the Mode S transponder generates a correct squitter approximately once per second.

(k) Records: Comply with the provisions of Section 43.9 of this chapter as to content, form, and disposition of the records.

PART 91—GENERAL OPERATING AND FLIGHT RULES

3. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

4. In § 91.24, paragraphs (a) and (b) are revised to read as follows:

§ 91.24 ATC transponder and altitude reporting equipment and use.

(a) *All airspace: U.S.-registered civil aircraft.* For operations not conducted under Parts 121, 127, or 135 of this chapter, ATC transponder equipment installed within the time periods indicated below must meet the performance and environmental requirements of the following TSO's

(1) *Through January 1, 1992:* (i) Any class of TSO–C74b or any class of TSO–C74c as appropriate, provided that the equipment was manufactured before January 1, 1990; or

(ii) The appropriate class of TSO–C112 (Mode S).

(2) *After January 1, 1992:* The appropriate class of TSO–C112 (Mode S). For purposes of paragraph (a)(2) of this section, "installation" does not include—

(i) Temporary installation of TSO–C74b or TSO–C74c substitute equipment, as appropriate, during maintenance of the permanent equipment;

(ii) Reinstallation of equipment after temporary removal for maintenance; or

(iii) For fleet operations, installation of equipment in a fleet aircraft after removal of the equipment for maintenance from another aircraft in the same operator's fleet.

(b) *Controlled Airspace: All aircraft.* Except for persons operating helicopters in terminal control areas at or below 1,000 feet AGL under the terms of a letter of agreement, and except for persons operating gliders above 12,500 feet MSL, but below the floor of the positive control area, no person may operate an aircraft in the controlled airspace prescribed in paragraphs (b)(1) through (b)(3) of this section, unless that aircraft is equipped with an operating coded radar beacon transponder having either a Mode 3-A 4096 code capability, replying to Mode 3/A interrogations with the code specified by ATC, or a Mode S capability, replying to Mode 3/A interrogations with the code specified by ATC and intermode and Mode S interrogations in accordance with the applicable provisions specified in TSO–C112, and that aircraft is equipped with automatic pressure altitude reporting equipment having a Mode C capability that automatically replies to Mode C interrogations by transmitting pressure altitude information in 100-foot increments. This requirement applies—

(1) in Group I Terminal Control Areas governed by § 91.90(a);

(2) in Group II Terminal Control Areas governed by § 91.90(b) except as provided therein; and

(3) in all controlled airspace of the 48 contiguous States and the District of Columbia, above 12,500 feet MSL, excluding the airspace at and below 2,500 feet AGL.

* * * * *

5. In § 91.90, paragraph (b)(2)(iii) is revised to read as follows:

§ 91.90 Terminal control areas.

* * * * *

(b) *Group II terminal control areas.*

* * * * *

(2) *Equipment requirements.*

* * * * *

(iii) The applicable equipment specified in § 91.24, except that for operations conducted prior to December 1, 1987, automatic pressure altitude reporting equipment is not required for any operation within the TCA. A transponder is not required for IFR flights operating to or from an airport outside of but in close proximity to the TCA when the commonly used transition, approach, or departure procedures to such airport require flight within the TCA.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

6. The authority citation for Part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

7. In § 121.345, paragraph (c) is revised to read as follows:

§ 121.345 Radio equipment.

* * * * *

(c) ATC transponder equipment installed within the time periods indicated below must meet the performance and environmental requirements of the following TSO's

(1) *Through January 1, 1992:* (i) Any class of TSO–C74b or any class of TSO–C74c as apporpriate, provided that the equipment was manufactured before January 1, 1990; or

(ii) The appropriate class of TSO–C112 (Mode S).

(2) *After January 1, 1992:* The appropriate class of TSO–C112 (Mode S). For purposes of paragraph (c) (2) of this section, "installation" does not include—

(i) Temporary installation of TSO–C74b or TSO–C74c substitute equipment, as appropriate, during maintenance of the permanent equipment;

(ii) Reinstallation of equipment after temporary removal for maintenance; or

(iii) For fleet operations, installation of equipment in a fleet aircraft after removal of the equipment for maintenance from another aircraft in the same operator's fleet.

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

8. The authority citation for Part 127 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

9. In § 127.123, paragraph (b) is revised to read as follows: Section 127.123 Radio equipment.

* * * * *

(b) ATC transponder equipment installed within the time periods indicated below must meet the performance and environmental requirements of the following TSO's

(1) *Through January 1, 1992:* (i) Any class of TSO–C74b or any class of TSO–C74c as appropriate, provided that the equipment was manufactured before January 1, 1990; or

(ii) The appropriate class of TSO–C112 (Mode S).

(2) *After January 1, 1992:* The appropriate class of TSO–C112 (Mode S). For purposes of paragraph (b)(2) of this section, "installation" does not include—

(i) Temporary installation of TSO–C74b or TSO–C74c substitute equipment, as appropriate, during maintenance of the permanent equipment;

(ii) Reinstallation of equipment after temporary removal for maintenance; or

(iii) For fleet operations, installation of equipment in a fleet aircraft after removal of the equippment for maintenance from another aircraft in the same operator's fleet.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

10. The authority citation for Part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

11. In § 135.143, paragraph (c) is revised to read as follows:

§ 135.143 General requirements.

* * * * *

(c) ATC transponder equipment installed within the time periods indicated below must meet the performance and environmental requirements of the following TSO's

(1) *Through January 1, 1992:* (i) Any class of TSO–C74b or any class of TSO–C74c as appropriate, provided that the equipment was manufactured before January 1, 1990; or

(ii) The appropriate class of TSO–C112 (Mode S).

(2) *After January 1, 1992:* The appropriate class of TSO–C112 (Mode S). For purposes of paragraph (c)(2) of this section, "installation" does not include—

(i) Temporary installation of TSO–C74b or TSO–C74c substitute equipment, as appropriate, during maintenance of the permanent equipment;

(ii) Reinstallation of equipment after temporary removal for maintenance; or

(iii) For fleet operations, installation of equipment in a fleet aircraft after removal of the equipment for maintenance from another aircraft in the same operator's fleet.

Issued in Washington, DC on January 29, 1987.

Donald D. Engen,

Administrator.

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CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 88/Pub. L. 100-1

Extending the time within which the President may transmit the Economic Report to the Congress (Jan. 28, 1987; 101 Stat. 3; 1 page) Price: $1.00

H.J. Res. 93/Pub. L. 100-2

To provide for a temporary prohibition of strikes or lockouts with respect to the Long Island Rail Road labor-management dispute. (Jan. 28, 1987; 101 Stat. 4; 2 pages) Price: $1.00

S.J. Res. 24/Pub. L. 100-3

To designate January 28, 1987, as "National Challenger Center Day" to honor the crew of the space shuttle Challenger. (Jan. 28, 1987; 101 Stat. 6; 1 page) Price: $1.00