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WHEN: June 16; at 9:00 a.m.
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1100 L Street NW., Washington, DC
RESERVATIONS: Maxine Hill, 202–523–5229

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Presidential Documents

Title 3—

The President

Presidential Determination No. 88–16 of May 20, 1988

Emergency Determination of Additional FY 1988 Refugee Admissions Numbers and Authorization of In-Country Refugee Status Pursuant to Sections 207(b) and 101(a)(42), Respectively, of the Immigration and Nationality Act

Memorandum for the United States Coordinator for Refugee Affairs

In accordance with Section 207(b) of the Immigration and Nationality Act ("the Act"), and after appropriate consultation with the Congress, I hereby determine that an unforeseen refugee emergency exists and that the admission of an additional 15,000 refugees from Eastern Europe and the Soviet Union during FY 1988, in addition to the 15,000 admissions from this region already authorized in Presidential Determination 88–1, is justified as required by Section 207(b) of the Act.

In accordance with part B of the first sentence of Section 101(a)(42) of the Act, I also determine, after appropriate consultation with the Congress, that nationals of the Soviet Union and persons without any nationality whose country of habitual residence is the Soviet Union may, if otherwise qualified, be considered refugees for the purposes of admission to the United States while still within the Soviet Union.

You are hereby directed to report this Determination to the Congress immediately and to publish it in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, May 20, 1988.

cc: The Secretary of State
The Attorney General
The Secretary of Health and Human Services

[FR Doc. 88–12985
Filed 6–6–88; 3:16 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 88–18 of June 3, 1988

Determination Under Subsection 402(d)(5) of the Trade Act of 1974—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93–618), January 3, 1975 (88 Stat. 1978) (hereinafter "the Act"), I determine, pursuant to subsection 402(d)(5) of the Act, that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waivers applicable to the Hungarian People's Republic and the People's Republic of China will substantially promote the objectives of section 402 of the Act.

This determination shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, June 3, 1988.

[FR Doc. 88–12986
Filed 6–6–88; 3:17 pm]
Billing code 3195–01–M

Editorial note: For the text of the President's letters to the Speaker of the House of Representatives and the President of the Senate, dated June 3, on the waiver continuation, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 23).

Rules and Regulations

Federal Register
Vol. 53, No. 110
Wednesday, June 8, 1988

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

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Part 795

Payment Limitation of a Married Couple With Respect to Farm Operations

AGENCY: Commodity Credit Corporation (CCC) and Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends the regulations set forth at 7 CFR 795.11 relating to the application of maximum payment limitation provisions with respect to farm operations which are conducted by a married couple. In order to provide for an orderly transition in implementing the payment limitation provisions of the 1987 Act for the 1989 crop year, this interim rule amends 7 CFR 795.11 to provide with respect to the 1988 crop year that a husband and wife may be considered to be separate persons so long as they each maintained separate farming operations prior to and after their marriage.

DATES: Effective June 3, 1988. Written comments must be received not later than July 8, 1988, to be assured of consideration.

ADDRESS: Written comments on this interim rule must be submitted to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), USDA, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles J. Riley, Section Chief, Cotton, Grain, and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013. Phone (202) 447-4696.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal assistance programs to which this interim rule applies are: Commodity Loan and Purchases—10.051; Cotton Production Stabilization—10.052; Emergency Conservation Program—10.054; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; Agricultural Conservation Program—10.063; Forestry Incentives Program—10.064; Rice Production Stabilization—10.065; and Conservation Reserve Program—10.069 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

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

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Number 0560-0096 has been assigned.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Since producers participating in the programs for which this part applies have already planted or are preparing to plant the crops affected by this interim rule, it has been determined that this interim rule shall be effective upon filing with the **Federal Register**. However, comments are requested with respect to this interim rule and such comments shall be considered in developing the final rule.

Statutory Background

A maximum payment limitation for commodity programs was first mandated by section 101 of the Agricultural Act of 1970 (Pub. L. 91-524). The 1970 Act limited payments to $55,000 per person under each of the wheat, feed grain and upland cotton programs for the 1971 through 1973 crops. There were a number of payments authorized under the 1970 Act including land diversion payments, wheat certificate payments, and other payments which were based upon specified prices and parity prices.

The Agriculture and Consumer Protection Act of 1973 (Pub. L. 93-86) made drastic reductions in the maximum payment limitation—down to $20,000 per person for the combined wheat, feed grain, and upland cotton programs. The 1973 Act instituted the concept of established ("target") prices and deficiency payments. The 1973 Act limited combined deficiency and diversion payments for the 1974 through 1977 crops.

The Food and Agriculture Act of 1977 (Pub. L. 95-113) increased the maximum payment limitation but retained the limitation for the combined wheat, feed grain, and upland cotton programs. The 1977 Act limited combined deficiency and diversion payments on wheat, feed grains, and upland cotton to $40,000 for the 1978 crops and $45,000 for the 1979 crops. It also limited rice deficiency payments to a separate total of $52,250 per person for the 1978 crop and $50,000 per person for the 1979 crop. The 1977 Act provided for a combined limitation of $50,000 per person on the total amount of payments which could be received for one or more of the annual programs for each of the 1980 and 1981 crops of wheat, feed grains, upland

cotton, and rice. Minimum loan and purchase rates were provided for wheat and feed grains, but the 1977 Act also provided discretionary authority to reduce the loan and purchase rates to aid export competitiveness. In the event there was any such loan and purchase rate reduction, compensation was to be made available by increasing established price (i.e., deficiency) payments. Such an increase was excluded from any maximum payment limitation.

The Agriculture and Food Act of 1981 (Pub. L. 97–98) continued the $50,000 maximum payment limitation on combined deficiency and diversion payments for the 1982 through 1985 crops. For the first time, a separate $100,000 maximum payment limitation was placed on disaster payments. Both limitations applied to combined payments on wheat, feed grains, upland cotton, and rice. In a manner similar to that provided for in the 1977 Act, discretionary authority was provided for reductions in loan and purchase rates reductions with corresponding increase in deficiency payments that were not subject to the maximum payment limitation. The Extra Long Staple Cotton Act of 1983 (Pub. L. 98–88) amended the 1981 Act to make payments which were available under the Extra Long Staple Cotton Program subject to the maximum payment limitation.

The Food Security Act of 1985 (Pub. L. 99–198) retained the same combined maximum limitation of $50,000 for deficiency and diversion payments and $100,000 for disaster payments for the 1986 through 1990 crops of wheat, feed grains, upland cotton, extra long staple cotton, and rice. However, the potential for direct payments to an individual producer was increased substantially by the 1985 Act, and many types of payments originally were not subject to any maximum payment limitation. The largest payments which originally were not subject to a maximum payment limitation were the additional wheat or feed grain deficiency payments which result from the downward adjustment in the loan and purchase rates, the same as authorized by the 1977 and 1981 Acts. These payments are sometimes referred to as "Findley payments."

Besides the Findley payments, the 1985 Act provided that other direct payments were also not subject to the $50,000 maximum payment limitation. This included payments such as:

—Gains realized by producers from marketing loans under the upland cotton and rice programs when producers are permitted to repay nonrecourse price support loans at less than the original loan principal;
—Loan deficiency payments when producers agree to forego obtaining nonrecourse loans and are paid the difference between the established loan rate and the lower repayment rate under a marketing loan program; and
—Inventory reduction payments.

Legislation enacted in 1988 (Pub. L. 99–500 and Pub. L. 99–591) amended the 1985 Act to impose an overall maximum limitation of $250,000 on the following:

—$50,000 limitation on regular deficiency payments and land diversion payments
—Gains realized from marketing loan repayments
—Loan deficiency payments
—Inventory reduction payments
—Findley payments
—Disaster payments
—Payments representing compensation for resource adjustment.

Substantial revisions of the existing statutory payment limitation provisions effective for the 1989–1990 crops subsequently were made by the Agricultural Reconciliation Act of 1987, as contained in the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). The types of payments subject to the limitations were not changed but these amendments addressed the issues of the eligibility of a producer to receive such payments and the manner in which a "person" will be determined for purposes of applying the maximum payment limitation provisions. With respect to farming operations conducted by a husband and wife, the 1987 Act provides that a husband and wife shall be one person unless they each had separate farming operations prior to their marriage and they maintain such operations separately after their marriage.

Congress provided the Secretary of Agriculture great deference in determining the manner in which these limitations were to be applied by providing that the Secretary shall determine the term "person" for such purposes. From the enactment of the 1970 Act until the enactment of the 1987 Act the various statutes which provided that the Secretary of Agriculture shall make such a determination remained virtually unchanged. Accordingly, since implementation of the 1970 Act, until now, a husband and wife in all instances have been considered to be one person for payment limitation purposes.

This manner of implementation of these provisions with respect to farming operations which are conducted by a husband and wife has been the subject of litigation. The validity of the regulations was upheld in 1981 in *Martin* v. *Bergland*, 639 F. 2d 647 (10th Cir. 1981). However, on March 31, 1988 the United States District Court for the District of Columbia held that the provisions of 7 CFR 795.11 which set forth the regulations which are applicable to such farming operations were invalid on the basis that they are unconstitutional because they are a burden on the right to marry that is not rationally related to a legitimate government interest. *Women Involved in Farm Economics* v. *USDA*, Civil Action No. 87–1752 (D. D.C. 1988). In order to provide for an orderly transition in implementing the payment limitation provisions of the 1987 Act for the 1989 crop year, this interim rule amends 7 CFR 795.11 to provide with respect to the 1988 crop year that a husband and wife may be considered to be separate persons so long as they each maintained separate farming operations prior to and after their marriage.

Interim Rule

Accordingly, 7 CFR Part 795 is amended as follows:

1. The authority citation continues to read as follows:

Authority: Sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat. 1444, as amended, 7 U.S.C. 1308; Pub. L. 99–500 and Pub. L. 99–591.

2. Section 795.11 is revised to read as follows:

§ 795.11 Husband and wife.

With respect to the 1988 crop year, a husband and wife shall be considered to be one person except that such individuals who, prior to their marriage, were separately engaged in unrelated farming operations will be determined to be separate persons with respect to such farming operations so long as the operations remain separate and distinct from any farming operation conducted by the other spouse if such individuals have executed a Contract to Participate in the 1988 Price Support and Production Adjustment Programs by April 15, 1988. Such individuals must file a form ASCS–561 with the county committee for each such farming operation by July 8, 1988, if they desire to be considered as separate persons under this section.

Signed at Washington, DC, on May 24, 1988.

Milt Heitz,

Executive Vice President, Commodity Credit Corporation and Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-12811 Filed 6-3-88; 11:47 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-134-AD; Amdt. 39-5954]

Airworthiness Directives; McDonnell Douglas Model DC-9-10 Through -80, and C-9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1309

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive, applicable to certain McDonnell Douglas Model DC-9-10 through -50, and C-9 (Military) series airplanes, which currently requires visual/borescope inspections, and repair or replacement, as necessary, of the aft pressure bulkhead tee cap. This amendment provides for optional eddy current inspections of the fuselage aft pressure bulkhead tee cap from the forward side of the bulkhead and increases the current repetitive inspection intervals. This action also expands the applicability to include certain Model DC-9-80 series airplanes. This action is prompted by reports of cracks in the aft pressure bulkhead tee cap. If this condition is not corrected, bulkhead tee cap cracks may develop, which could result in rapid depressurization and cause severe structural damage to the airplane.

EFFECTIVE DATE: July 15, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6321.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 85-16-03, Amendment 39-5109 (50 FR 30804; July 30, 1985), to require the inspections for cracks, and repair or replacement, as necessary, of the aft pressure bulkhead tee cap, on certain McDonnell Douglas DC-9 series airplanes, was published in the **Federal Register** on February 1, 1988 (53 FR 2765). The comment period for the proposal closed March 28, 1988.

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

The commenters requested that certain editorial changes be made to clarify the identification of the area to be inspected, repetitive inspection procedures, and certain repair procedures. The comments do not significantly affect the intent of the proposed rule. Therefore, the FAA concurs and suggested changes have been incorporated in this final rule, where appropriate.

Since issuance of the Notice, the FAA has reviewed and approved Revision 2 of McDonnell Douglas Alert Service Bulletin A57-191, dated December 22, 1987, which incorporates clarification concerning repetitive inspections and closing actions. The final rule has been revised to incorporate these changes reflected by Revision 2.

The FAA has determined that these revisions are for clarification purposes only; they do not impose any additional economic burden on any operator, nor do they expand the scope of this AD.

The FAA has been queried as to whether this action also supersedes AD 85-06-03, Amendment 39-5014 (50 FR 10936), which addressed this same subject. The FAA notes that AD 85-06-03 was superseded by AD 86-16-03; this action now supersedes AD 86-16-03. Wording in the introduction to the final rule has been revised to clarify this point.

This final rule has also been revised to remove all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph D.

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

It is estimated that 740 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish an optically-aided visal inspection, and 148 manhours per airplane to accomplish high and low frequency eddy current inspections from the forward side of the bulkhead. The average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $355,200 and $4,380,000, respectively.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model DC-9 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 85-16-03, Amendment 39-5109 (50 FR 30804; July 30, 1985), [which superseded AD 85-06-

03, Amendment 39–5014 (50 FR 10936; March 19, 1985)], with the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9–10 through –80 and C–9 (Military) series airplanes, Fuselage Number 1 through 1309, certificated in any category. Compliance required as indicated, unless previously accomplished within the last 3,500 landings.

To detect cracks which could result in structural failure of the aft pressure bulkhead, accomplish the following:

A. Prior to the accumulation of the number of landings indicated in the table below, inspect the aft pressure bulkhead attach cap section around the entire periphery of the fuselage in accordance with the following procedures outlined in either paragraph B. or C., below.

TABLE

Accumulated landings as of September 6, 1985	Initial inspection prior to accumulation of the following landings after effective date
35,000 to 49,999	1,500 landings.
50,000 to 59,999	1,000 landings.
60,000 or more	300 landings.

For airplanes with less than 35,000 landings as of September 6, 1985, conduct the initial inspection before the accumulation of 36,500 landings.

Note.—The specific areas of concern include the forward and/or aft face of the upstanding leg of the tee. The area extends outboard to approximately the inboard point of tangency for the .188-inch tee filet radius on the upstanding leg.

B. Using an optically aided visual inspection technique, inspect from the aft side of the bulkhead in accordance with Option I of McDonnell Douglas Alert Service Bulletin A53–191, Revision 2, dated December 22, 1987 (hereinafter referred to as ASB 53–191).

1. If no tee cracks are found, repeat the optically aided visual inspections at intervals not to exceed 3,500 landings.

2. If tee cracks are found, perform a high frequency eddy current inspection of the aft side of the bulkhead to determine length of cracks.

a. If cracks are within the limits outlined in paragraph 1.D. of the Compliance section of ASB 53–191, perform repetitive high frequency eddy current inspections weekly from aft side of the bulkhead.

(1) If weekly repetitive high frequency eddy current inspections reveal that a previously identified crack has progresed more than 0.5 inch from the original crack tip, or within 18 months after initial detection of crack, whichever occurs first, accomplish the requirements of paragraph B.2.b., below.

b. If cracks have exceeded the limits outlined in paragraph 1.D. of the Compliance section of ASB 53–191, prior to further flight:

(1) Repair by replacing cracked tee cap or splicing in a section of tee cap with a new like part, in accordance with McDonnell Douglas Service Rework Drawing SR09530001 (originally identified as MDC–J060305), dated February 15, 1985. Upon accumulation of 36,500 landings after the repair, conduct repetitive inspections in accordance with paragraph B. or C. of this AD; or

(2) Repair by replacing the cracked tee cap or splicing in a section of tee cap with a new improved part, in accordance with McDonnell Douglas Service Rework Drawing SR09530001, dated February 15, 1985. This constitutes terminating action for the required inspections of the sections of tee cap replaced. Continue repetitive inspections of tee sections not replaced in accordance with paragraph B. or C. of this AD.

C. Using a high and low frequency eddy current inspection technique, inspect from the forward side of the bulkhead in accordance with Option II of ASB 53–191.

1. If no cracks are found, repeat high and low frequency eddy current inspection from the forward side of the bulkhead at intervals not to exceed 15,000 landings.

2. If cracks are found, accomplish the following:

a. If cracks are within the limits outlined in paragraph 1.D. of the Compliance section of ASB 53–191, repeat high frequency eddy current inspections weekly from the aft side of the bulkhead.

(1) If weekly repetitive high frequency eddy current inspections reveal that a previously identified crack has progressed more than 0.5 inch from the original crack tip, or within 18 months after initial detection of the crack, whichever occurs first, accomplish the requirements of paragraph C.2.b., below.

b. If cracks have exceeded the limits outlined in paragraph 1.D. of the Compliance section ASB 53–191, prior to further flight:

(1) Replace cracked tee cap or repair by splicing a section of tee cap with a new like part, in accordance with McDonnell Douglas Service Rework Drawing SR09530001 (originally identified as MDC–J060305), dated February 15, 1985. Upon accumulation of 36,500 landings after the repair, resume repetitive inspections in accordance with paragraph B. or C., above; or

(2) Repair by replacing the cracked tee cap or splicing in a section of tee cap with a new improved part, in accordance with McDonnell Douglas Service Rework Drawing SR09530001, dated February 15, 1985. This constitutes terminating action for the required inspections of the sections of the tee cap replaced. Continue repetitive inspections of tee cap sections not replaced in accordance with paragraph B. or C. of this AD.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base in order to comply with the requirements of this AD.

F. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment supersedes AD 85–06–03, Amendment 39–5014, as superseded by AD 85–16–03, Amendment 39–5109.

This Amendment becomes effective July 15, 1988.

Issued In Seattle, Washington, on May 31, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–12845 Filed 6–7–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–CE–03–AD; Amdt. 39–5951]

Airworthiness Directives; Mitsubishi Models MU–2B, MU–2B–10, –15, –20, –25, –26, –26A, –30, –35, –36, –36A, –40, and –60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Mitsubishi Models MU–2B, MU–2B–10, –15, –20, –25, –26, –26A, –30, –35, –36, 36A, –40, and –60 airplanes equipped with Bendix Model M–4C and M–4D autopilots and/or Bendix electric trim systems. On airplanes equipped with Bendix Model M–4C and M–4D autopilots and/or Bendix electric trim systems, this amendment requires: (a) The standardization of the function, location and color of the autopilot/manual electric pitch trim system disconnect/interrupt push button; (b) verification that the system can be disconnected, interrupted or shut off by at least three independent methods; and (c) changing the LIMITATION section of the Airplane Flight Manual of certain

models together with an associated placard on the main instrument panel. This amendment is the result of a request from the National Transportation Safety Board (NTSB), which while investigating a series of fatal MU-2B accidents, concluded that pilots were becoming confused in the operation of the interrupt/disconnect switches for the electric pitch trim and autopilot systems. Compliance with this AD will preclude pilot confusion and possible loss of airplane.

DATE: *Effective Date:* July 11, 1988; *Compliance:* As prescribed in the body of the AD.

ADDRESSES: Mitsubishi Service Bulletins (S/B) No. 206, dated October 13, 1987, and 066/22-006, dated December 18, 1987, applicable to this AD may be obtained from Beech Aircraft Corporation (Licensee for Mitsubishi), Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 681-7279. The information may be examined at the Rules Docket, Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: For Mitsubishi Aircraft International, Inc. (MAI) Type Certificate (TC) A10SW series airplanes manufactured in the U.S.: Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, ACE-130W, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4419. For Mitsubishi Heavy Industries, Inc. (MHI) TC A2PC series airplanes manufactured in Japan: Herbert Peters, Aerospace Engineer, Western Aircraft Certification Office, ANM-173W, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; Telephone (213) 297-1367.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring standardization of the control wheel disconnect switches on certain MU-2B airplanes, was published in the **Federal Register** on February 3, 1988 (53 FR 3044). The proposal resulted from a National Transportation Safety Board (NTSB) request that the FAA conduct an investigation of the Bendix M-4 Series autopilot systems as installed on the MU-2B Series airplanes and take such appropriate action as deemed necessary to correct any deficiencies identified. The result of this investigation, with cooperation between MHI, MAI, Beech Aircraft Corporation (licensee for MHI), Bendix Corporation, and the FAA, revealed that there are at least seven different configurations of the disconnect/interrupt switches for the autopilot and electric pitch trim systems. Pilot familiarity with the autopilot disconnect procedures in one MU-2B model airplane does not guarantee the same familiarity with another MU-2B model airplane even if owned by the same operator. This situation could lead to pilot confusion and thus affect the safe operation of another MU-2B Series airplane.

Subsequently MHI and Beech issued S/B No. 206, dated October 13, 1987, and S/B No. 066/22-006, dated December 18, 1987, which covers those MU-2B model airplanes equipped with an FAA approved installation of the Bendix M-4 autopilot by providing one manual electric pitch trim switch configuration or one combination autopilot/interrupt pitch trim disconnect/interrupt switch configuration.

The FAA examined the available information related to the issuance of MU-2B S/B No. 206 and S/B No. 066/22-006, and the mandatory classification of S/B No. 206 by the JCAB. Based on the foregoing, the FAA determined that the condition addressed by these service bulletins is an unsafe condition that may exist on products of this type design certificated for operation in the United States. Consequently, the FAA proposed an AD to correct the condition and be applicable to all Mitsubishi MU-2B model airplanes equipped with a Bendix M-4C or M-4D autopilot and/or a manual electric pitch trim system. This proposed AD would require the incorporation of S/B No. 206 and/or S/B No. 066/22-006 as appropriate to: (a) Standardize the location, functions and color of the disconnect/interrupt switch; (b) verify that the system can be disconnected, interrupted or shut off by at least three independent methods; and (c) change the LIMITATION section of certain MU-2B model airplanes together with mounting an associated red placard on the main instrument panel prohibiting coupled autopilot approaches below 125 KCAS or 300 feet AGL.

Interested persons have been afforded an opportunity to comment on the proposal. Two commenters responded. One commenter expressed: (a) Concern and objection over the specific reference to the "Bendix Model M-4C and M-4D Autopilots and/or Bendix Electric Pitch Trim Systems" installed on the MU-2B aircraft since there is at least one other manufacturer's autopilot on these airplanes; (b) the NPRM, as written, is misleading since it leads to a logical but erroneous interpretation that incorporation of the Mitsubishi service bulletin resolution is limited only to those airplanes with Bendix autopilot installation; and (c) that this specific autopilot is intrinsically responsible for necessitating this resolution. This commenter, however: (a) Supports the improvement the Mitsubishi service bulletins will accomplish through standardization of function, location, and color of autopilot/pitch trim system controls; (b) is of the opinion that all current and future MU-2B autopilot/pitch trim system installations need to comply with this standardization of control and nomenclature regardless of the particular manufacturer; and (c) that the AD should discuss the matter generically without reference to any manufacturer.

The FAA disagrees with the commenter's objection because the NPRM was based on concerns expressed in the NTSB recommendations A-86-132 through A-86-134 of January 9, 1987, which specifically address the Bendix systems. The FAA agrees that the Mitsubishi service bulletins referred to in the NPRM only apply to the Bendix autopilot installations. Similar changes to other autopilots/electric pitch trim systems will be addressed in a future NPRM.

The other commenter stated that paragraphs (d)(2) and (d)(3) in the proposed AD did not specify a separate system functional ground test for the manual electric pitch trim system on airplanes which have both an autopilot system and a manual electric pitch trim system installed and suggested the following change:

(d)(2) If a manual electric pitch trim system is installed with or without an autopilot system, engage * * *

The same commenter stated that a Bendix M-4D autopilot system with a manual electric pitch trim system uses a split trim switch, fed from the autopilot circuit breaker in parallel with the autopilot system, not by a separate electric trim circuit breaker and suggested the following change:

(d)(2)(iv) The electric trim circuit breaker is pulled. (On some MU-2B airplanes without an electric trim circuit breaker, the autopilot circuit breaker/switch is used to disconnect the system in lieu of the electric trim circuit breaker.)

This commenter also stated that the autopilot master switch installation does not depend on the MHI manual electric trim system installation and suggested the following change:

(d)(3)(ii)(B) The autopilot master switch is positioned to "OFF" (on some MU-2B airplanes not equipped with an autopilot

master switch beside the controller, the radio master switch * * *).

This commenter further points out that the revised flight manual procedures provide two distinctly different second-step autopilot disconnect methods, depending on the existing installations. On early MU-2B's the procedure is to use the autopilot master switch, and on later MU-2B's the procedure is to use the radio master switch. However, the MHI service bulletins show the required modification instructions in the event that the existing installation on: (a) An early MU-2B does not have an autopilot; or (b) a later MU-2B's radio master switch does not feed power to the autopilot system.

The FAA concurs that the above requested changes are clarifying corrections. Accordingly, the proposal is adopted with these changes incorporated therein. No comments or objections were received on the FAA determination of the related cost to the public. The FAA has determined there are approximately 274 airplanes affected by this AD. The cost of complying with this AD is estimated to be $400 per airplane, with a total cost estimated to be $109,600 to the private sector. The cost of compliance with this AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore I certify that this section (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Mitsubishi: Applies to Model MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 (all serial numbers, with or without the SA suffix) airplanes certificated in any category, equipped with Bendix M-4C or M-4D autopilots and/or Bendix electric pitch trim systems.

Note 1.—The serial number of airplanes manufactured in the United States by Mitsubishi (MAI) under TC A10SW are suffixed by "SA." The serial numbers of airplanes manufactured in Japan by Mitsubishi Heavy Industries, Inc. (MHI) under TC A2PC have no suffix.

Compliance: Required within the next 200 flight hours or five (5) calendar months, whichever occurs first, unless already accomplished.

To minimize the possibility of confusion in autopilot/manual electric pitch trim disconnect/interrupt switch location, accomplish the following:

(a) Modify the control yoke in the affected model and serial numbered airplanes as follows:

(1) For MU-2B-30 and -35 model airplanes manufactured under TC A2PC equipped with a Japanese Civil Airworthiness Board (JCAB) approved Bendix M-4C autopilot, in accordance with MHI Service Bulletin (S/B) No. 206 dated October 13, 1987, or

(2) For all other MU-2B model airplanes equipped with an FAA approved installation of the Bendix M-4C or M-4D autopilots, in accordance with MHI S/B No. 066/22-006, dated December 18, 1987.

(b) For MU-2B-35 and -36 model airplanes with Bendix autopilots installed in accordance with STC SA1693SW and MU-2B-35, -36A and -60 model airplanes with Bendix M-4D autopilots installed in accordance with approved MAI data, accomplish the following:

(1) Insert additional placard data in the LIMITATION section of the Airplane Flight Manual Supplement (AFMS) as follows: "COUPLED AUTOPILOT APPROACHES BELOW 125 KCAS or 300 FEET AGL NOT PERMITTED."

(2) Fabricate and install a permanent red colored placard in full view of the pilot using white colored letters of a minimum of 0.10 inches in height which state: "COUPLED AUTOPILOT APPROACHES BELOW 125 KCAS OR 300 FEET AGL NOT PERMITTED."

(c) Insertion of a copy of this AD in the LIMITATIONS section of the AFMS satisfies the requirements of paragraph (b)(1) of this AD.

(d) Prior to returning the aircraft to service, accomplish a visual configuration check and system functional ground test, and record successful completion in the appropriate airplane maintenance record as prescribed by FAR 91.173, as follows:

(1) Visually verify that:

(i) The disconnect/interrupt switch is red in color and located on the outboard horn of the control wheel; and,

(ii) The disconnect/interrupt switch is properly labeled as shown in Figure 7 of the MHI S/B No. 206 for A2PC airplanes or as shown in Figure 8 or Figure 9, (as appropriate for the control wheel configuration) of MHI S/B No. 066/22-006 for A10SW airplanes, as applicable; and,

(iii) The autopilot circuit breaker is properly labeled.

(2) If a manual electric pitch trim system is installed with or without an autopilot system, engage the system and press the trim button to cause the manual pitch trim wheel to rotate, then verify that after each of the following operations is performed the manual pitch trim wheel stops moving when:

(i) The disconnect/interrupt switch is depressed;

(ii) The Master Electric Power switch is positioned to "OFF;"

(iii) The Radio Master switch is positioned to "OFF" (if installed and so configured),

(iv) The electric trim circuit breaker is pulled. (On some MU-2B airplanes without an electric trim circuit breaker, the autopilot circuit breaker/switch is used to disconnect the system in lieu of the electric trim circuit breaker.)

Note 2.—It is very important to verify that the manual pitch trim wheel stops moving after each of the above operations.

(3) If an autopilot system is installed, with or without a manual electric trim system, engage the system and then verify:

(i) That the autopilot system can be overpowered by pushing or pulling on the control yoke; and,

(ii) That, while overpowering the autopilot, the manual pitch trim wheel stops moving when each of the following operations is performed:

(A) The disconnect/interrupt switch is depressed;

(B) The autopilot master switch is positioned to "OFF" (On some MU-2B airplanes not equipped with an autopilot master switch beside the controller, the radio master switch must be used to disconnect the system in lieu of the autopilot master switch);

(C) The autopilot circuit breaker is pulled.

Note 3.—It is very important that the manual pitch trim wheel stops moving after each of these operations.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) An equivalent method of compliance with this AD may be used on the MHI airplanes, if approved by the Manager, Western Aircraft Certification Office, ANM-170W, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2003; and on the MAI airplanes, if approved by the Manager, Wichita Aircraft Certification Office, ACE-115W, FAA, 1801

Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation (Licensee to Mitsubishi), P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681–7279; or may examine the documents referred to herein at FAA, office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on July 11, 1988.

Issued in Kansas City, Missouri, on May 26, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88–12844 Filed 6–7–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM86–7–000; Order No. 473]

Compression Allowances and Protest Procedures Under NGPA Section 110

Issued June 1, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Publication of pipeline filings made pursuant to Order No. 473.

SUMMARY: In Order No. 473, 52 FR 21,660 (June 9, 1987), the Federal Energy Regulatory Commission amended its regulations to provide parties an opportunity to protest allowances for the delivery of natural gas which were heretofore presumed authorized by "area rate" clauses in gas sales contracts. Order No. 473 amended 18 CFR 271.1104(h) to require all interstate pipelines to provide a listing of those producers that have claimed an entitlement to delivery allowances pursuant to an "area rate" clause. The interstate pipelines were required to indicate whether they concurred in the producers claim for delivery allowances.

Attached are the lists provided by the interstate pipelines as required by 18 CFR 271.1104(h) (1987). Where the filing allowed, the lists are divided by pipeline into those natural gas producers who in the opinion of the pipeline do or do not have contractural authority to collect delivery allowances pursuant to an area rate clause.

DATE: As provided in 18 CFR 271.1104(h)(4)(i) (1987), any protest must be filed by September 6, 1988.

ADDRESS: An original and 14 copies of each protest must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Arthur W. Iler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–5275.

SUPPLEMENTARY INFORMATION:

Lois D. Cashell,

Acting Secretary.

ANR Pipeline Company (ANR)

ANR submitted the following list for which ANR states the area rate clause does provide contractual authority for the first seller to collect the applicable delivery allowance:

Producer	Rate Sch.	ANR contract	
		Number	Date
Amerada Hess Corp	181	2163	07–24–79
Do	179	2164	07–24–79
Do	180	2161	07–24–79
Amoco Production Co	547	0931	03–04–70
Do	814	2193	08–10–79
Do	159	1174	06–01–76
Do	821	2605	04–03–80
Do	248	2010	01–01–79
Do	823	2604	04–03–80
Do	801	1254	08–24–78
Do	842	3897	09–10–82
Do	157	1116	06–01–76
Do	160	1018	06–01–76
Do		4173	01–30–84
Do	802	0997	08–24–78
Do	792	2094	09–06–78
Do	809	2356	06–28–79
Do	154	1202	06–01–76
ANR Production Co		3310	06–23–81
Do	54	3345	08–21–81
Do	81	4065	03–18–83
Do	55	0991	10–27–77
Do	32	1040	03–03–77
Do		2303	10–24–79
Do	52	1871	03–08–79
Do	51	1869	02–21–79
Do	17	1045	07–17–75
Do		1870	02–08–79
Arco Oil & Gas Co	791	4161	12–08–83
Do	659	0917	05–01–72
Do	687	1207	09–10–64
Do	712	0989	04–29–77
Do	322	0889	04–18–68
Do	714	1120	07–28–77
Do	722	1037	06–10–77
Do	744	2116	06–13–79
Do	624	0874	04–08–69
Do	760	2794	09–05–80
Do	623	0910	10–09–68
Do	772	3283	06–30–81
Do	284	1080	12–17–63
Do	784	3909	09–29–82
Do	595	0905	04–10–67
Do	322	0889	04–18–68
Do	634	0916	06–03–70
Do	639	1140	06–17–66
Do	786	3953	12–03–82
BHP Petro (Americas) Inc (Form. Energy Res)	136	1160	06–01–53
Do	104	0964	11–22–66
Do	52	1137	06–30–76
Cabot Corp	102	0891	10–01–70
Cabot Petroleum Corp	73	2443	01–08–80
Canadian Occid of Cal		2275	09–26–75
Do		2445	09–28–79
Chevron U.S.A. Inc	45	0913	05–01–68
Chevron U.S.A. Inc. (Formerly Gulf Oil)	518	0987	05–18–77
Do	550	1009	12–28–76
Do	591	2025	01–02–68
Do	541	0962	04–30–74
Do	334	2885	10–15–80
Do	91	1101	01–23–56
Do	633	0946	09–13–72
Do	316	1164	09–21–65
Do	601	0945	10–07–71
Do	208	1147	10–31–60
Do	600	1030	09–20–72
Do	625	1008	09–08–71
Do	314	0562	04–01–66
Cities Service Co	485	2039	06–07–79
Cities Service O&G Corp. (Form. Occidental)		1049	12–31–79
Cities Service O&G Corp. (Form. Oxy Petro)		2409	09–28–79
Do		2274	09–26–79
Cities Service Oil & Gas Corp	469	1041	10–21–77
Do	483	1823	04–03–79
Do	455	1122	06–02–76
Do	310	0908	10–11–68
Do	329	0918	06–03–70
Do	490	2597	05–09–80
Do	481	1822	04–04–79
Do	392	0919	05–01–72
Do	311	0926	04–08–69
Do	453	1261	06–02–76
Do	457	1038	01–24–77
Do	302	0890	04–19–68
CNG Producing Co	48	2299	10–15–79
Do	47	2209	08–27–79
Do	42	2155	07–06–78
Conoco, Inc	342	0924	04–19–68
Do	439	0988	06–28–77
Do	443	1039	06–18–77
Do	357	0925	06–03–70
Do	462	2187	08–08–79
Do	485	3654	03–19–82
Do	347	0928	03–21–69
Do	346	0909	10–07–68
Do	466	2569	03–27–80
Do	386	0920	05–01–72
Decalta International Corp		2736	10–05–79
Do		2385	11–05–79
Do		2781	12–17–79
El Grande Pipeline Co	1	0510	11–18–66
EIF Aquintane Petro		1140	06–17–66
Exchange Oil & Gas Corp	5	0964	11–22–66
Exxon Co. USA	473	0939	03–13–70
Do	436	0906	09–12–67
Do	503	0938	01–26–72
Felmont Oil Corp	18	0894	10–01–70
George R. Brown Part (Formerly Highland Res)	10	1002	09–03–71
Do	15	1003	12–03–76
Do	7	0871	01–02–68

Producer	Rate Sch.	ANR contract	
		Number	Date
Do	14	0932	01-26-77
Do	12	1026	09-27-72
H.B. Joint Venture (1983)	7	3959	11-18-82
Hamilton Brothers Oil & Gas Corp		0947	09-27-72
Do		1001	09-11-71
Do		0961	05-29-74
Do		0575	09-25-72
Do		0949	11-03-71
Hamilton Brothers Oil Co		0960	05-29-74
Do		0948	11-03-71
Do		1073	09-27-72
Do		0871	01-02-68
Do		0574	09-25-72
Do		0900	09-11-71
Hassie Hunt Expl Co et al	41	0950	11-04-71
Do	46	0934	01-27-77
Do	35	0904	06-25-64
Home Petroleum Corp		0606	12-10-73
Hunt Industries	8	0871	01-02-68
Do	7	1243	07-01-65
Hunt Oil Co	78	1007	02-04-77
Do	75	1027	02-27-74
Do	70	1004	09-03-71
Do	63	0904	06-25-64
Do	66	0871	01-02-68
Do	77	0935	12-08-76
Do	63	0904	06-25-64
Hunt Petroleum Corp	4	1005	09-03-71
Do	9	1029	02-27-74
Do	5	0980	11-04-71
Do	11	1006	02-23-77
Do	8	0979	02-27-74
Hunt Petroleum Corp (Formerly Grand Isle)	7	4250	01-02-68
Do	60	4251	12-08-76
Do	3	4405	07-01-65
Hunt Petroleum Corp (Formerly LA-Hunt)	39	4125	06-25-64
Do	60	4126	12-08-76
Do	48	4130	09-02-71
Do	52	4132	03-01-74
Do	44	4124	01-02-68
Do		4134	12-22-81
Kaiser Francis Oil		3586	01-08-82
Kerr-McGee Corp	112	0892	10-01-70
Do	27	1020	06-01-76
Lamar Hunt Trust Est	46	0934	01-27-77
LLOXY Holdings Inc	16	4114	08-23-83
Marathon Oil Co	161	1992	05-05-79
Do	168	2149	07-19-79
Mesa Operating Ltd Partnership	150	3867	04-16-82
Do	147	3253	16-11-81
Do	155	3914	09-20-82
Do	137	2030	06-01-79
Do	136	1983	04-23-79
Do	111	1985	04-23-79
Do	112	1990	04-23-79
Do	154	3913	09-20-82
Do	75	1046	11-25-75
Do	108	1409	03-07-79
Do	156	3912	09-20-82
Do	153	3915	09-20-82
Do	107	1424	03-29-79
Mobil E&P North America (Formerly Superior)		3033	02-09-81
Do	147	0968	03-19-71
Do	7	1154	10-06-77
Do	208	1158	07-11-78
Do	257	0953	09-27-77
Do	157	0970	02-03-72
Do	201	1156	04-25-78
Do	274	2622	05-08-80
Do		2208	12-07-78
Do	270	0952	10-14-77
Do	188	1152	12-06-76
Do	267	0951	05-11-71
Do		2898	11-04-80
Do	202	1155	04-06-78
Do	262	2598	05-08-80
Do	260	0896	02-24-77
Do	181	0974	12-15-75
Do	237	2405	09-21-79
Do	161	1034	10-10-72
Do	156	1014	09-03-71
Do	125	1168	07-14-67
Do	184	1015	02-24-77
Do	183	1151	12-06-76
Do	186	0957	03-30-77
Do	182	0972	04-01-75
Do	198	0954	09-15-77
Do	250	0897	09-09-71
Do	168	1051	04-30-74
Do	252	0572	10-10-72
Do	245	2699	11-04-80
Do	253	0955	05-17-77
Mobil Oil Exp. & Prod. Southeast Inc	120	1016	09-02-71
Do	37	1229	07-30-65
Do	102	0943	09-21-72
Do	131	0959	05-01-74
Do	100	0944	11-02-71
Do	121	0985	06-11-74
Do	97	1872	01-11-79
Do	120	1017	12-17-76
Do	3	1022	03-07-78
Do	107	0573	09-21-72
Do	132	0899	03-10-77
Do	121	0984	10-29-71
Do	92	2198	09-13-79
Do	106	0898	09-03-71
Do	117	0871	01-02-68
Do	122	1036	03-13-74
Mobil PRDG TX & New Mexico (Formerly Superior)	296	3675	02-04-82
Do	255	1260	08-09-77
Do	279	3674	02-04-82
Do	263	2742	07-31-80
Do	244	2869	10-10-80
Do	268	1119	07-21-77
Do	196	1263	07-22-77
Do	269	1259	07-21-88
Do	254	1121	08-09-77
Do	276	2747	07-31-80
Do	195	1253	07-22-77
Do	243	2714	07-25-80
Do	247	3056	01-16-81
Do	278	3055	01-16-81
Mobil Producing Texas & New Mexico Inc	6	2860	10-10-80
Do	1	1123	07-21-77
Do	2	1262	07-21-77
Do	150	1251	03-07-78
Do	9	3675	02-04-82
Do	5	2715	07-02-80
Murphy Oil Corp	30	1257	03-03-78
Newmont Oil Co		2199	08-17-79
Northwestern Mutual Life Ins Co	3	4429	05-31-85
Do	3	1255	08-04-78
Do	5	2509	02-11-80
Do	2	1256	04-27-78
Do	4	2232	09-12-79
Odeco Oil & Gas Co (Murphy & Ocean)	31	2494	02-28-80
Do	30	2271	09-19-79
Do	46	3930	10-20-82
Do	35	3047	02-04-81
Do	37	3285	05-18-81
Do	18	0903	07-29-77
Do	19	1258	01-13-78
Do	29	2119	07-16-79
Do	20	1252	04-14-78
Do	32	2498	02-28-80
Do	36	3048	02-04-81
Do	33	2497	02-28-80
Pennzoil Co (Formerly Pennzoil Oil & Gas)	49	2278	09-27-79
Do	59	4084	06-10-83
Do	52	3338	08-04-81
Pennzoil Co (Formerly Pennzoil Prod Co)	249	4047	01-11-83
Do	317	2277	09-27-79
Do	334	4084	06-10-83
Do	332	3337	08-04-81
Do	249	1131	06-16-80
Petro-Hunt Corp	4	4268	09-03-71
Do	46	4238	01-27-77
Do	2	4270	02-24-74
Phillips Oil Co	24	1139	09-08-64
Phillips Petro Co (Formerly Aminoil)	79	3157	03-26-81
Do	55	2595	05-01-80
Do	54	2599	05-01-80
Phillips Petro Co (Form. Amer Ind Oil Co)		1044	06-12-75
Phillips 66 Natural Gas Co	4	0861	12-11-45
Do	552	0884	03-21-74
Do		2462	02-07-80
Do	549	0885	01-28-74
Do	610	0864	05-31-77
Phillips Petroleum Co	411	1108	03-05-65
Phillips 66 Natural Gas Co	592	0881	07-08-76
Do	377	0863	12-01-49
Do	585	2042	05-22-79
Do		2516	01-21-80
Do	636	0865	08-29-78
Phillips Petroleum Co		2584	04-29-80
Phillips 66 Natural Gas Co	591	0882	07-08-76
Do	602	0883	10-01-76
Do	572	0879	12-13-74
Placid Oil Co	39	0904	06-25-64
Do	60	0933	01-28-77
Do	54	0963	05-17-74
Do	40	1163	07-01-65
Do	53	0983	03-01-74
Do		3569	12-22-81
Do	52	1032	03-01-74
Do	48	1012	09-02-71
Do	62	1013	11-10-76
Do	44	0871	01-02-68
Do	49	0981	10-29-71
Pogo Producing Co	55	2276	09-24-79
Do	59	3390	08-20-81
Prosper Energy Corp	6	1010	09-03-71
Do	3	1243	07-01-65
Do	5	1033	02-27-74
Do	4	0936	12-08-76
Do	8	1011	02-04-77
Do	7	0872	01-02-68
Rosewood Res. Inc (Form. Rosewood Pros)		4254	02-27-74
Do		4251	12-08-76
Do		4250	01-02-68
Do	3	4405	07-01-65
Do		4252	09-03-71
Rosewood Resources Inc	44	4124	01-02-68

Producer	Rate Sch.	ANR contract	
		Number	Date
Do	39	4125	06-25-64
Do		4134	12-22-81
Do	4	4251	12-08-76
Do	52	4132	03-01-74
Do	2	4270	02-27-74
Do	48	4130	09-02-71
Do	39	4125	06-25-64
Do	7	4268	09-03-71
Samedan Oil Corp	54	4137	06-30-70
Do	55	4138	05-01-72
Do	53	4136	06-03-70
Do	52	4135	05-01-72
Do	58	4140	06-03-70
Do	59	4141	05-01-72
Do	57	4139	05-01-72
Do	56	4142	06-03-70
Santa Fe Energy Co		1050	05-23-75
Do		1945	04-12-79
Shell Offshore Inc	17	0915	08-30-68
Do	22	0914	04-08-71
Do	11	0956	07-18-67
Do	14	0940	05-03-68
Shell Oil Co	314	1142	12-22-64
Do	330	1103	07-30-65
Do	329	1088	07-30-65
Sun Operating Ltd Partnership	739	2711	07-01-80
Do	759	1944	04-10-79
Do	229	0998	11-09-67
Do	736	1124	05-16-78
Do	752	3853	06-30-82
Do	486	0893	10-01-70
Do		2726	06-04-80
TBP Offshore Co		4104	07-25-83
Tenneco Oil Co (For Tenneco Exp Ltd)	9	0912	10-06-76
Texaco Inc	377	2093	08-26-65
Do	513	1000	10-28-74
Do	535	1079	07-01-76
Do	420	0965	08-09-68
Do	166	0921	04-17-68
Do	544	0937	03-08-77
Texaco Producing Inc	431	0871	01-02-68
Texaco Producing Inc (Formerly Getty)	199	0923	05-01-72
Do	435	0942	09-21-72
Do	436	0571	09-21-72
Do	437	0958	05-13-74
Do	166	0921	04-17-68
Do	437	2272	10-08-79
Do	175	0929	04-09-69
Do	439	2154	02-07-77
Do	181	0922	06-03-70
Do	431	0871	01-02-68
Do	414	1125	06-13-77
Do	118	1100	06-06-60
Do	432	1508	09-09-71
Do	174	0911	10-11-68
Do	140	1142	12-22-64
Do	447	2596	05-13-80
Do	433	0941	11-01-71
Do	49	2377	10-10-79
Do	52	2488	02-01-80
Union Exploration Partners Ltd	264	2773	08-25-80
Wagner & Brown		3472	08-19-81
Kerr-McGee Corp	61	1081	07-31-58

ANR submitted the following list in which ANR contends that it was not intended nor agreed that the area rate clause would provide contractual authority for the first seller to collect the applicable delivery allowance:

Producer	Rate Sch.	ANR contract	
		Number	Date
Amoco Production Co	490	0271	04-28-67
Arco Oil & Gas Co	225	3910	09-26-82
Do	414	0202	11-13-78
Do	443	3911	09-27-82
Golin R L		1736	12-21-78
Do		2016	04-24-79
Do		2348	11-02-79
Burk Royalty		2016	04-24-79
Burke Harold E. (Formerly Tenneco)		4688	02-28-69
Cabot Petroleum Corp	14	0046	11-08-78
CNG Producing Co (Formerly Tenneco)		4687	01-22-68
Cobra Oil & Gas Corp		1736	12-21-78
Do		2348	11-02-79
Dillard A R Jr		1736	12-21-78
Do		2016	04-24-79
Do		2348	11-02-79
Estate of H. L. Hunt	39	0508	10-23-69
Do	41	0508	10-23-78
Do	36	0507	07-06-62
Falls Distributing Co		1736	12-21-78
Do		2016	04-24-79
Foran Oil Co (Formerly Tenneco)		4730	12-18-58
Do		4731	05-14-59
Do		4732	03-09-57
Do		4778	03-09-57
Do		4786	03-09-57
Gadsco Inc		2016	04-24-79
Goodin Raymond M Trust		1736	12-21-78
Harvey Nancy D		1736	12-21-78
Do		2348	11-02-79
J. M. Huber Corp	92	0504	11-24-71
Kaiser Francis Oil Co		3964	12-24-58
Kaiser Francis Oil Co (Formerly Tenneco)		4823	05-14-59
Mesa Operating Ltd Partnership		3401	08-20-81
Mesa Operating Ltd Partnership (Formerly Tenneco)		4825	03-09-57
Miller Lois D		1736	12-21-78
Do		2348	11-02-79
Osborne Robert W		1736	12-21-78
Do		2016	04-24-79
Do		2348	11-02-79
Osborne William G		2016	04-24-79
PNG Operating Co (Formerly Tenneco)		4713	05-14-59
Prentice Napier & Green (Morm Mulistate Oil)		0495	10-22-74
Prentice Napier & Green (Formerly Tenneco)		4711	08-28-62
Do		4746	08-28-62
Do		4788	08-28-62
Spess Oil Co Inc (Formerly Multistate Oil Co)		0621	06-27-74
Spess Oil Co. Inc (Formerly Tenneco)		4753	01-22-68

Producer	Rate Sch.	ANR contract	
		Number	Date
Star Production Inc (Formerly Tenneco)		3768	05-12-82
Tenneco Oil Co	290	0586	04-02-74
Do	362	0351	08-28-62
Do	357	3769	05-13-82
Do	222	0548	01-22-68
Do	412	0298	10-11-77
Do	183	2531	03-24-80
Do	401	0517	02-28-69
Do	399	1397	08-25-60
Do	378	3767	05-13-82
Do	405	0352	09-21-72
Do	187	3934	10-25-82
Do	347	0204	09-22-78
Do	407	0296	03-19-74
Do	350	1949	06-01-74
Do	65	3771	05-13-82
Do	408	3770	05-13-82
Do		3750	04-29-82
Do	411	3768	05-12-82
Do	362	4464	03-27-85
Do	361	1398	10-14-60
Do	139	4465	03-27-85
Tenneco Oil Co (For Multistate Oil)	32	0783	08-26-75
Do	10	0495	10-22-74
Do	9	0496	01-07-75
Do	31	0621	06-27-74
Do	13	2642	05-27-80
Tenneco Oil Co (for Tema Oil)	412	0298	10-14-60
Do	361	1398	10-14-60
Do	407	0296	03-19-74
Do	357	3769	05-13-82
Do	401	0517	02-28-69
Do	408	0299	03-04-75
Do	362	0351	08-28-62
Do	399	1397	08-25-60
Do	411	0300	07-22-76
Do	405	0352	09-21-72
Do	378	3767	05-13-82
Texaco Producing Inc (Formerly Getty)	179	0552	12-22-69
Thomas W S		1736	12-21-78
Vanguard Oil & Co Inc (Formerly Tenneco)		4779	08-28-62
Vita Oil Co (Formerly Tenneco)		4699	08-28-62
Waugh Duane		1736	12-21-78
Waugh Glen A		1736	12-21-78
Do		2016	04-24-79
Do		2348	11-02-79
Young Walter D		1736	12-21-78
Do		2016	04-24-79
Thomas W. S		2016	04-24-79

Colorado Interstate Gas Company (CIG) concurs in the following claims:

Seller	Rate schedule	Contract No.	Contract date
Martin Oil		679	02-8-77
RJB Gas Pipeline		535	10-2-74
RJB Gas Pipeline		669	12-1-76
RJB Gas Pipeline		704	08-1-77
RJB Gas Pipeline		840	12-1-79
CIG protests the following claims:			
Cabot Corporation	6	122-02	04-1-60

Seller	Rate schedule	Contract No.	Contract date
Cabot Corporation	11	122-06	09-16-60
Cities Service Oil & Gas Co	431	393	10-12-70
Cities Service Oil & Gas Co	679	824	10-11-79
Cities Service Oil & Gas Co	735	934	03-3-81
Martin Oil		681	02-08-77
Tenneco	370	73-01	11-15-54
Tenneco	364	73-02	12-30-54
Tenneco	410	79	01-12-55
Tenneco	373	104-06	01-01-85
Tenneco	32	138	12-21-77
Tenneco	400	153	08-30-57
Texaco Inc		110	07-12-78
Texaco Inc		729	01-26-78

COLUMBIA GAS TRANSMISSION COMPANY (COLUMBIA)

Seller	Contract No.	Rate schedule or contract date
Columbia Concurs the Following claims for delivery allowances:		
Castle Gas Co., Inc	AP-20222-PA	12-12-74
Do	AP-22886-PA	08-09-78
Angerman Associates, Inc	AP-21868-WV	04-22-77
Castle Gas Co., Inc	AP-21927-PA	06-07-77
J.W. Kinzer	7533-KY	10-07-71
Do	7240-KY	01-14-70
Do	7498-KY	01-20-71
Natural Resource Management Corp	7736-WV	03-08-73
NRM Petroleum Corp. et al	AP-20234-WV	12-06-73
Mark R. Worl d/b/a Rockwell Petroleum Co	AP-21389-WV	06-12-76
Do	AP-22304-WV	11-09-77
Natural Resource Management Corp	AP-22336-WV	12-05-77
Union Drilling, Inc	AP-22058-PA	11-09-77
Ashland Exploration, Inc	5153-KY	96
Do	6302-KY	73
Do	6316-KY	171
Alert Oil & Gas Co., Inc	6778-KY	02-20-67
Ashland Exploration, Inc	AP-22944-WV	09-26-78
Do	6257-WV	140
Cities Service Corp	6035-KY	248
Do	6352-WV	281
Do	6632-KY	292
Do	6843-WV	297
Do	7265-WV	327
Do	7395-WV	333
Do	7467-KY	339
Do	7566-WV	347
Do	7692-KY	399
Do	1186-KY	235
Amoco Production Co	LA870001	431
Do	SW20238LA	731
Do	SW21455LA	723
Do	SW22022LA	750

COLUMBIA GAS TRANSMISSION COMPANY (COLUMBIA)—Continued

Seller	Contract No.	Rate schedule or contract date
Do	SW22947LA	760
Do	5653	173
Do	5679	190
Do	5670A	78
Do	5664	384
Do	5838	198
Do	5852	219
Do	5930	539
Do	5958	604
APP Production Inc	SW23912LA	11-21-79
Do	SW26368LA	11-06-81
Arnold Isaac	5895	06-28-63
Atlantic Richfield Co	5659	63
Do	5664	519
Do	5679B	261
Berry Phillip B	5664	07-08-81
BHP Petroleum Company Inc	SW23402TX	140
Do	SW23403TX	10-13-81
Do	SW26341TX	10-13-81
Cabot Petroleum Corp	SW25177LA	74
Do	SW25228TX	75
Do	SW25803TX	76
Canso Oil and Gas Inc	SW23451LA	06-28-79
Case Pomeroy Oil Corp	SW22517LA	9
Do	SW25266LA	20
Chevron USA Inc	SW23570LA	172
Do	SW24205LA	175
Do	SW25200LA	181
Do	SW25227WY	01-08-81
Do	SW25879LA	184
Cities Service O&G Corp	SW23024LA	521
Do	SW23394LA	520
Cities Service O&G Corp. (Was Coltexco)	5670B	6
CNG Producing Co	SW20499LA	44
Do	SW24723LA	54
Do	SW25875LA	57
Do	SW25876LA	58
Columbia Gas Develop Corp	SW20255LA	16
Do	SW20331LA	17
Do	SW20499LA	34
Do	SW20958LA	18
Do	SW21060LA	19
Do	SW21450LA	21
Do	SW21538LA	22
Do	SW21932LA	23
Do	SW21976LA	25
Do	SW22057LA	26
Do	SW23056LA	32
Do	SW23081LA	33
Do	SW23309LA	35
Do	SW23521LA	37
Do	SW23522LA	38
Do	SW23946LA	39
Do	SW24338LA	40
Do	SW25919LA	41
Do	SW26272LA	42
Do	5923	8
Do	5926	9
Do	5928	10
Do	5956A	12
Combined Resources Corp	SW27477OK	05-17-82
Conoco Inc	SW25521LA	476

COLUMBIA GAS TRANSMISSION COMPANY (COLUMBIA)—Continued

Seller	Contract No.	Rate schedule or contract date
Cotton Petroleum Co	5664	08-05-81
Cox Edwin L	5664	06-23-81
CSX Oil & Gas Corp	SW23941LA	59
Do	SW25130LA	60
Devon Energy Corp	SW27476OK	04-23-82
Do	SW27507OK	04-23-82
Diamond Shamrock Offshore, Limited Partnership (Was FMP Operating Co.)	SW26353TX	1
ELF Aquitaine Inc	5947A	09-12-72
Do	5963C	11-14-72
Enstar Petr Inc	5926	11
Exchange Oil & Gas Co	SW20842LA	34
Do	5911	6
Exxon Corp	LA860001	1-27-86
Do	LA860003	02-12-86
Do	LA860004	716
Do	LA860009	03-18-86
Do	LA860011	03-18-86
Do	LA860012	03-18-86
Do	LA860014	03-18-86
Do	SW20375LA	538
Do	SW20905LA	632
Do	SW21019LA	585
Do	SW21034LA	635
Do	SW21446LA	567
Do	SW21453LA	574
Do	SW21559LA	639
Do	SW21805LA	596
Do	SW21902LA	597
Do	SW21907LA	588
Do	SW21998LA	598
Do	SW22081TX	605
Do	SW22344LA	610
Do	SW22567LA	618
Do	SW22572LA	623
Do	SW22831LA	624
Do	SW22891TX	627
Do	SW22984LA	661
Do	SW22997LA	650
Do	SW23384TX	665
Do	SW23421LA	654
Do	SW23599LA	658
Do	SW24245LA	02-22-80
Do	SW24246LA	664
Do	SW24398LA	06-02-80
Do	SW24619LA	06-18-80
Do	SW25906LA	05-13-81
Do	SW25983LA	06-24-81
Do	SW26220LA	679
Do	SW26382LA	681
Do	SW27184LA	04-05-82
Do	SW27419LA	04-22-82
Do	SW27421LA	04-22-82
Do	SW27530LA	683
Do	5647	26
Do	5649A	489
Do	5894	357
Do	5894D	480
Do	5972	541
Felmont Oil Corp	SW22515LA	27
Do	SW22516LA	29
Do	SW24203LA	36
Do	SW24339LA	39
Do	SW25267LA	42
Do	SW25542LA	43
Do	5657	9

COLUMBIA GAS TRANSMISSION COMPANY (COLUMBIA)—Continued

Seller	Contract No.	Rate schedule or contract date
Do	SW20499LA	62
Do	SW22011LA	63
Do	SW23598LA	68
Do	SW25252LA	70
Do	5922	49
Do	5929	52
Getty Oil Co	SW21808LA	223
Do	SW26608TX	524
Do	5662B	26
Do	5946A	393
Do	5963B	396
Do	5964	203
Grace Petr Corp	SW27462OK	05-10-82
Hamilton Brothers Oil Co	SW27474OK	05-17-82
Houston Oil & Mineral Corp	SW25877TX	04-20-81
JR Spiehler, Jr, et al	5668	11-01-79
Koch Industries Inc	SW23481LA	07-16-79
Do	SW23482LA	07-16-79
Do	SW23484LA	07-16-79
Mesa Oper LTD Partnership	SW23029LA	159
Do	SW25878LA	146
Do	SW25965LA	06-15-81
MFP Limited Partnership (Was Hamilton Brothers)	SW27474OK	05-17-82
Mobil Oil Corp	LA860016	105
Do	SW21440LA	75
Do	SW22001LA	78
Mobil Oil Corp (Was Alminex U.S.A., Inc.)	SW22442ATX	272
Mobil Oil Corp. (Was Natresco)	SW22442BTX	281
Mobil Oil Corp. (Was Canadian Superior)	SW22442CTX	265
Mobil Oil Corp	SW22442TX	240
Do	SW22599TX	258
Do	SW23475LA	111
Do	SW25172LA	127
Do	SW25173LA	128
Do	SW26363LA	130
Do	SW27829AR	06-16-82
Do	SW27832LA	08-05-82
Do	5968	57
Monsanto Company (Currently BHP Petroleum, FERC Order Cancels Rate Schedule #139, Reserves Depleted)	SW23401TX	139
Northwestern Mutual Ins. Co	SW22345LA	1

COLUMBIA GAS TRANSMISSION COMPANY (COLUMBIA)—Continued

Seller	Contract No.	Rate schedule or contract date
Odeco Oil & Gas Co	SW26236LA	38
Oxy Petroleum Inc	SW23393LA	03-22-79
Pelto Oil Co	SW25212LA	12-29-80
Petro Lewis Corp	SW24701TX	08-11-80
Do	SW27460TX	05-10-82
Phillips Oil Co	SW22369LA	671
Do	5881	660
Phillips Petroleum Co	SW21456ALA	780
Do	SW23987LA	781
Do	SW2428LA	725
Do	SW24397TX	777
Do	5655B	273
Do	5948A	515
Do	5963A	519
Samedan Oil Corporation (Was Texas Eastern)	SW21967LA	69
Samedan Oil Corporation (Was Texas Eastern)	SW23923LA	77
Santa Fe Energy Part. L.P	SW23504LA	07-05-79
Do	SW23505LA	07-05-79
Do	SW23910LA	10-29-79
Shell Offshore Inc	SW25219TX	67
Shell Oil Co	SW24649LA	61
Sun Expl and Prod Co	5844	367
Sun Oil Co	5834	76
Tenneco Expl Ltd	SW21349LA	16
Do	SW21909LA	23
Tenneco Oil Co	5674	96
Texaco Inc	SW20263LA	5
Do	SW20970ALA	539
Do	SW20970BLA	4
Do	SW20970LA	533
Do	SW21445LA	591
Do	SW22439LA	92
Do	SW22924LA	560
Do	SW26383LA	603
Do	5660	4
Do	5661A	463
Do	5665	3
Do	5666	2
Do	5885	306
Do	5903	370
Do	5912	392
Do	5932	454
Do	5938	446
Triumph Energy Inc. (Was Sun Oil Co.)	5658	02-22-82
TXO Production Corp	SW27087OK	01-15-82
TXO Operating Co. (Was Exchange Oil & Gas Co.	5945A	22

COLUMBIA GAS TRANSMISSION COMPANY (COLUMBIA)—Continued

Seller	Contract No.	Rate schedule or contract date
Union Expl Part Ltd (UXP)	SW21889LA	234
Do	SW23922LA	258
Do	5680	12
Do	5906	168
Union Oil Co. of Calif	SW22879LA	246
Union Pacific Resources Co	5374	1
Union Tex Petr Div Allied	SW23079LA	149
Do	SW23501LA	151
Do	5677B	120
Do	5963	111
Columbia protests the following sellers claims for delivery allowances:		
Amtex Oil & Gas, Inc	AP-20689-OH	02-23-76
Do	AP-21652-OH	04-16-77
Amtex Oil & Gas, Inc., et al	AP-22133-OH	11-21-77
Do	AP-22283-OH	05-08-78
Do	AP-22704-OH	09-11-78
Do	AP-22705-OH	09-11-78
Kenoil	AP-20690-OH	03-10-76
Do	AP-21102-OH	03-11-76
Kenoil, et al	AP-21120-OH	05-28-76
Do	AP-21150-OH	07-20-76
Kenoil	AP-21168-OH	07-20-76
Do	AP-22777-OH	12-04-78
Benatty, et al	AP-22703-OH	09-18-78
Major Oil Corp., et al	AP-22716-OH	09-25-78
Kenoil	AP-21235-OH	10-29-76
Do	AP-21293-OH	01-19-77
Do	AP-21691-OH	06-20-77
Kenoil, et al	AP-21748-OH	08-17-77
Energy Investments, et al	AP-22145-OH	12-06-77
Pro Energy Services, Inc	AP-22192-OH	01-16-78
The Oxford Oil Co	AP-20188-OH	11-25-74
Poston Oper. Co., Inc., et al	AP-21798-OH	10-06-77
J.W. Kinzer	7533-KY	10-07-71

Consolidated Natural Gas Transmission Corporation Filed the Following:

Producer	FERC rate schedule No.	Consolidated GPC No. (No R.S. No.)	Disposition
Felmont	R.S. 4, 12		Protest any charges exceeding one cent.
Peake Operating Co		1499—12-14-53	Settled.
		1512—12-14-53	
Getty Oil Co	R.S. 465, 471, 472	2708—01-03-63	Settled.

Producer	FERC rate schedule No.	Consolidated GPC No. (No R.S. No.)	Disposition
Integrated Energy Inc		453 PA—11-04-80	Protest any charges exceeding one cent.
		436 PA—12-12-79	
Convest Energy Corp		3937—10-26-77	Protest any charges exceeding one cent.
		4052—10-05-79	
		4122—03-31-80	
		4073—12-03-79	
		4145—06-09-80	
		4171—08-12-80	
Cities Service Oil & Gas Corp	R.S. 262, 282, 318, 337, 391		Settled.
Texaco Producing Co	R.S. 5		Agree that charges are authorized.
Texas International Co		3901—06-03-77	Protest any charges exceeding one cent.
Chevron	R.S. 360, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 573, 574, 575, 580, 615, 617, 618, 628.		Partly protest any charges exceeding one cent.
Union Oil Company		GPC dated 10-31-24	Protest any charges exceeding one cent.
Cabot		1019—12-01-47	Settled.
		3158—03-30-66	
		4006—10-13-78	
Ashland Exploration, Inc	R.S. 82, 83, 84, 85, 113, 186, 257		Settled.
James F. Scott		471—10-09-81	Partly settled. Protest any charges exceeding one cent.
		3170—05-20-64	
		3395—02-11-69	
		3642—10-19-72	
		4008—09-11-78	
		4053—10-05-79	
		4088—01-10-80	
		4093—01-24-80	
		4172—08-12-80	
		4198—20-31-80	
		4211—12-24-80	
		4227—02-13-81	
		4268—09-10-81	
		4310—02-05-82	
Phillips Petroleum Co	R.S. 395		Protest any charges exceeding one cent.
Pennzoil	R.S. 5, 10		Paid.
Murphy Oil	R.S. 31		Paid.
CNG Producing Co	R.S. 2, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 46, 51, 52, 53, 55.		Paid.
Texas Gas Exploration	R.S. 28, 50, 51, 57, 64		Paid.

El Paso Natural Gas Company (El Paso)

El Paso provided in the following:

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS

In PGA Effective October 1, 1984

Seller name	Rate schedule	Cont. No.	Cont. date
American Petrofina Co	32	0148	
American Petrofina Co	102	0247	
Amoco Production Co	18	0104	
Amoco Production Co	21	0044	
Amoco Production Co	23	0114	
Amoco Production Co	68	0078	
Amoco Production Co	133	0052	
Amoco Production Co	313	0100	
Amoco Production Co	348	0041	
Amoco Production Co	405	0161	

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS—Continued

In PGA Effective October 1, 1984

Seller name	Rate schedule	Cont. No.	Cont. date
Amoco Production Co	411	7187	
Amoco Production Co	438	0169	
Amoco Production Co	605	4909	
Amoco Production Co	617	0224	
Amoco Production Co	631	0103	
ARCO Oil and Gas Co	26	0099	
ARCO Oil and Gas Co	193	4491	
ARCO Oil and Gas Co	336	4439	
ARCO Oil and Gas Co	337	6114	
ARCO Oil and Gas Co	402	4159	
ARCO Oil and Gas Co	406	4187	
ARCO Oil and Gas Co	406	4189	

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS—Continued

In PGA Effective October 1, 1984

Seller name	Rate schedule	Cont. No.	Cont. date
ARCO Oil and Gas Co	492	6150	
ARCO Oil and Gas Co	497	4173	
ARCO Oil and Gas Co	500	4208	
ARCO Oil and Gas Co	501	4209	
ARCO Oil and Gas Co	503	4210	
ARCO Oil and Gas Co	514	7144	
ARCO Oil and Gas Co	709	4996	
Chama Petroleum Co		7240	01-15-80
Chevron U.S.A. Inc	104	6336	
Chevron U.S.A. Inc	105	6801	
Chevron U.S.A. Inc	110	4081	
Chevron U.S.A. Inc	111	4488	
Chevron U.S.A. Inc	113	0107	
Chevron U.S.A. Inc	114	6116	
Chevron U.S.A. Inc	115	4043	
Chevron U.S.A. Inc	116	6242	

El Paso Natural Gas Company Listing of Sellers With Production-Related Costs—Continued

In PGA Effective October 1, 1984

Seller name	Rate schedule	Cont. No.	Cont. date
Chevron U.S.A. Inc	130	7069	
Chevron U.S.A. Inc	135	0172	
Chevron U.S.A. Inc	140	4912	
Chevron U.S.A. Inc	145	8204	
Conoco Inc	145	4467	
Conoco Inc	316	4820	
Davis, J. L.		0001	12-01-53
Energy Reserves Group	58	7354	
Enserch Exploration		813A	12-01-78
Enstar Petroleum Co		602E	12-30-80
Exxon Corp	415	0173	
Felmont Oil Corp		8811	01-15-78
Getty Oil Co	4	0048	
Getty Oil Co	151	0032	
Getty Oil Co	249	6333	
Getty Oil Co	263	0043	
Getty Oil Co	265	0123	
Getty Oil Co	283	4041	
Getty Oil Co	301	6700	
Getty Oil Co	343	7235	
Getty Oil Co	364	0122	
Getty Oil Co	387	0214	
Getty Oil Co	390	0204	
Getty Oil Co	450	686D	
Getty Oil Co	481	4165	
Getty Oil Co	481	4179	
Getty Oil Co	486	6117	
Getty Oil Co	494	4168	
Getty Oil Co	494	4173	
Grace Petroleum Corp		4539	12-07-59
Grace Petroleum Corp		6191	04-16-73
Grace Petroleum Corp		7732	04-16-73
Gulf Oil Corp	467	0174	
Hassie Hunt Exploration	30	7021	
Hunt Industries, A Partnership	5	7060	
Hunt Oil Co	7	0003	
Hunt Oil Co	34	4014	
Hunt Oil Co	36	6196	
Hunt Oil Co	68	7549	
Hunt Oil Co	72	7652	
Hunt Oil Co	82	5052	
Hunt, H.L., Estate of	27	6196	
Hunt, H.L., Estate of	28	4014	
Hunt, Lamar	3	4112	
Hunt, Lamar	4	4113	
Hunt, N.B.	4	4113	
Hunt, N.B.	5	4112	
Hunt, W.H.	4	4113	
Hunt, W.H.	5	4112	
Marathon Oil Company	135	8169	
Pennington, W.L.		8283	03-24-76
Pennzoil Co.	42	7938	
Pennzoil Co.	43	7963	
Phillips Petroleum Co	32	0094	
Phillips Petroleum Co	438	0175	
Phillips Petroleum Co	485	0187	
Phillips Petroleum Co	497	0196	
Phillips Petroleum Co	498	0194	
Phillips Petroleum Co	499	0198	

El Paso Natural Gas Company Listing of Sellers With Production-Related Costs—Continued

In PGA Effective October 1, 1984

Seller name	Rate schedule	Cont. No.	Cont. date
Phillips Petroleum Co	500	0197	
Phillips Petroleum Co	501	0199	
Phillips Petroleum Co	502	0195	
Phillips Petroleum Co	504	0193	
Phillips Petroleum Co	506	0203	
Phillips Petroleum Co	507	0202	
Phillips Petroleum Co	514	0205	
Phillips Petroleum Co	600	8230	
Phillips Petroleum Co	606	0264	
Samedan Oil Corp		624B	04-10-79
Tenneco Oil Co	41	0111	
Tenneco Oil Co	254	6119	
Tenneco Oil Co	334	8804	
Texaco, Inc.	17	0105	
Texaco, Inc.	18	0117	
Texaco, Inc.	19	0047	
Texaco, Inc.	21	0121	
Texaco, Inc.	169	6244	
Texaco, Inc.	328	0157	
Texaco, Inc.	346	0162	
Union Oil Co. of California	10	0129	
Union Oil Co. of California	108	0027	

El Paso Natural Gas Company Listing of Sellers With Production-Related Costs

[In PGA Effective April 1, 1985 in Which the Requested Data Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Bigbee, Harry L		4539	12-07-59
Bigbee, Harry L		8432	11-12-76
Bigbee, Harry L		8777	12-06-77
Conoco Inc	208	4712	
Davis, J.L.		0295	05-02-77
Exxon Corp	475	0181	
Exxon Corp	509	0212	
Exxon Corp	523	0218	
Exxon Corp	533	0247	
Exxon Corp	540	0250	
Exxon Corp	557	0275	
Getty Oil Corp	424	8912	
Gulf Oil Corp	231	7022	
Gulf Oil Corp	444	6956	
Gulf Oil Corp	453	0252	
Gulf Oil Corp	522	8677	
Merrion Oil & Gas Co		4751	04-03-63
Merrion, J. Gregory		4685	01-19-61
Mobil Producing Texas	94	7256	
Mobil Producing Texas	134	8284	
Mobil Producing Texas	140	6956	

El Paso Natural Gas Company Listing of Sellers With Production-Related Costs—Continued

[In PGA Effective April 1, 1985 in Which the Requested Data Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Mobil Producing Texas	162	706D	
Monsanto Co	51	4714	
Monsanto Co	132	8620	
Phillips Petroleum Co	10	0073	
Phillips Petroleum Co	484	0184	
Phillips Petroleum Co	505	0201	
Union Texas Petroleum	12	0093	
Union Texas Petroleum	64	0004	
Warren Petroleum Co	28	0076	
Warren Petroleum Co	30	0098	
Warren Petroleum Co	43	0126	
Warren Petroleum Co	44	0050	
Warren Petroleum Co	56	0133	
Warren Petroleum Co	60	0190	
Warren Petroleum Co	61	0210	
Warren Petroleum Co	63	0208	
Warren Petroleum Co	64	0209	
Warren Petroleum Co	65	0206	
Warren Petroleum Co	66	0211	
WIG Exploration, Inc	7359		11-09-66
Zia Energy, Inc	6043		08-18-54

El Paso Natual Gas Company Listing of Sellers With Production-Related Costs

[In El Paso's Direct Billing Effective October 7, 1986, in Which the Requested Date Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Amoco Production Co	23	0114	
Amoco Production Co	348	0041	
ARCO Oil and Gas Co	492	6150	
ARCO Oil and Gas Co	493	4170	
Bigbee, Harry L		4539	12-07-59
Bigbee, Harry L		8432	11-12-76
Bigbee, Harry L		8777	12-06-77
Mobil Producing Texas and New Mexico Inc	19	0219	
Mobil Producing Texas and New Mexico Inc	159	0274	
Pennington, W.L.		8283	03-24-76
Southland Royalty Co		0259	08-04-75

EL PASO NATUAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS—Continued

[In El Paso's Direct Billing Effective October 7, 1986, in Which the Requested Date Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Sun Exploration & Production Co	1	0045	
Sun Exploration & Production Co	174	7169	
Sun Exploration & Production Co	311	0113	
Sun Exploration & Production Co	313	0102	
Warren Petroleum Co	22	0106	
Warren Petroleum Co	28	0076	
Warren Petroleum Co	30	0098	
Warren Petroleum Co	43	0126	
Warren Petroleum Co	44	0050	
Warren Petroleum Co	55	0112	
Warren Petroleum Co	56	0133	
Warren Petroleum Co	60	0190	
Warren Petroleum Co	61	0210	
Warren Petroleum Co	63	0208	
Warren Petroleum Co	64	0209	
Warren Petroleum Co	65	0206	
Warren Petroleum Co	66	0211	
Warren Petroleum Co	67	0039	

LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS

[In El Paso Direct Billing Effective October 31, 1986, in Which The Requested Data Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Mobil Producing Texas and New Mexico Inc	149	8830	

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS

[In El Paso's Direct Billing Effective December 1, 1986, In Which The Requested Data Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Bow Valley Petroleum, Inc		602E	12-30-80

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS—Continued

[In El Paso's Direct Billing Effective December 1, 1986, In Which The Requested Data Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Mobil Producing Texas and New Mexico Inc	197	0292	

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS

[In El Paso's Direct Billing Effective January 30, 1987 in Which The Requested Data Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Union Texas Petroleum Corp	30	0110	
Amoco Production Co	405	0161	
Amoco Production Co	411	7187	
Amoco Production Co	605	4909	

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS

[In El Paso's Direct Billing Effective March 1, 1987 in Which The Requested Data Has Not Previously Been Furnished]

Seller name	Rate schedule	Cont. No.	Cont. date
Mobil Oil Exploration & Producing Southeast Inc	133	6791	
Texaco Producing Inc	390	0204	

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS

[Pursuant to Order 473 Issued June 3, 1987, at Docket No. RM86-7-000]

Seller name	Rate schedule	Cont. No.	Cont. date
Lewis B. Burleson, Inc		810D	10-22-80
Cities Service Oil & Gas Corp		0378	12-04-80
Cities Service Oil & Gas Corp	419	8043	
Cities Service Oil & Gas Corp	451	8556	
Cities Service Oil & Gas Corp	480	0178	
El Ran, Incorporated		0334	07-01-79

EL PASO NATURAL GAS COMPANY LISTING OF SELLERS WITH PRODUCTION-RELATED COSTS—Continued

[Pursuant to Order 473 Issued June 3, 1987, at Docket No. RM86-7-000]

Seller name	Rate schedule	Cont. No.	Cont. date
Estoril Producing Corp		689E	12-15-80
Dameron Petroleum Corp		878C	05-09-80
Grace Petroleum Corp		770G	09-19-81
Grace Petroleum Corp		897H	03-15-82
Hillin Production Co		876C	05-27-80
Shell Western E&P Inc	19	0121	
Shell Western E&P Inc	20	0124	
Shell Western E&P Inc	315	0159	
Tiffany Gas Co		7055	03-30-26
Cities Service Oil & Gas Corp		0378	12-04-80
Cities Service Oil & Gas Corp	419	8043	
Cities Service Oil & Gas Corp	451	8556	
Cities Service Oil & Gas Corp	480	0178	
Shell Western E&P Inc	19	0121	
Shell Western E&P Inc	30	0124	
Shell Western E&P Inc	315	0159	
Tiffany Gas Co		7055	03-30-62

Mississippi River Transmission Corporation (MRT)

MRT filed the following noting that it concurs in the seller's claims for delivery allowances:

First seller	Contract date	Rate schedule No.
Pelto	Sept. 11, 1978	
Cities Service Co.	Oct. 1, 1980	No. 723.
Dalton J. Woods.	Mar. 26, 1980	
Exxon Corp.	Jan. 27, 1973	No. 21.
Tenneco Oil Co.	May 24, 1978	No. 155/340.
Phillips Petroleum Co.	Sept. 15, 1981	No. 15.
Arco Oil and Gas Co.	Aug. 26, 1981	No. 2.
Murphy Oil USA, Inc.	Feb. 23, 1973	No. 6.
Murphy Oil USA, Inc.	Nov. 7, 1983	No. 5.

Mountain Fuel Resource, Inc. (MFG)

MFR Filed the Following:

Producer-Sellers That MFR Believes Are Entitled to the Delivery Allowance

First Seller, Contract Date and Rate Schedule No.

BelNorth Petroleum Co., [Now Enron Oil & Gas Co.] Contract No. 429.
Amoco Production Co., Rate Schedule 507
BelNorth Petroleum Corp. [Now Enron Oil & Gas Co.], Contracts Nos. 125 and 429
BHP Petroleum (Americas) Inc., Rate Schedule 123
Champlin Petroleum Co., Rate Schedule 125
Chevron U.S.A., Inc., Rate Schedule 100
Eason Oil Co.
Getty Oil Co. [now Texaco, Inc.]
Sante Fe Energy Co., Contract No. 290
Southland Royalty Co., Contract No. 256
Southland Royalty Co. & Tom Marsh Inc., Contract No. 172
Superior Oil Co. [now Mobile Oil Corp.], Contract No. 200

National Fuel Gas Supply Corporation (National)

National filed the following list in which it states the sellers are entitled to collect production related costs under section 271.1104 of the Commission's regulations:

LIST OF FIRST SELLERS

1. Shell Western E&P Inc.	Rate Schedule 2.
2. Wayne D. Ankerman, W. Douglas Ankerman, Jr.	Gas Sales and Purchase Contract, Dated July 1, 1975.

Natural Gas Pipeline Corporation of America (Natural)

Natural filed the following list of contracts in which it disputes the collection of delivery allowances by the sellers:

Producer date	Contract date	Contract number	R/S or small producer certificate number.
Amoco	01-04-80	1875	
Arco	09-01-67	234	R/S #609
Texaco	09-12-79	1405	
Marsh	03-27-59	370	C/S #73-0021
Gulf	06-11-65	1096	R/S #501
Amoco	10-15-64	301	R/S #404
Anschultz	03-12-81	1804	C/S #71-0783
Tenneco	06-15-61	348	R/S #359
Tenneco	07-07-79	1692	R/S #184
Gulf	01-02-78	1286	R/S #130
Belnorth	06-02-72	573	R/S #17
Arco	09-01-67	240	R/S #609
Marathon	01-24-78	1276	R/S #151
Tenneco	07-08-76	2612	R/S #371
Mitchell	12-27-77	1191	R/S #19
Getty	04-12-71	143	R/S #384
Sun	12-30-77	1299	R/S #344
Getty	09-01-67	496	R/S #385
Getty	10-10-67	236	R/S #160
Hanson	01-15-79	1290	
Enserch	08-19-65	693	R/S #98
Chevron	06-11-65	1096	R/S #501
Chevron	02-29-84	2175	

Northern Natural Gas Company (Northern)

On December 8, 1987, Northern provided the following list of contracts under which producers have asserted a right to collect delivery allowances pursuant to an area rate clause. Northern concurs with these assertions:

Contract number	Producer name	Contract date	R/S or small producer docket
5923	Phillips Petroleum Co.	2-08-52	R/S #18
6026	Maxus Energy Corporation.	10-15-52	
7605	Phillips 66 Natural Gas Co.	10-02-54	
9301	Maxus Energy Corp.	1-25-58	
11329	Texaco Producing Inc.	9-15-60	R/S #162
12295	Farmland Industries Inc.	8-07-59	
12322	Arco Oil & Gas Company.	9-25-56	R/S #376
12995	Phillips 66 Natural Gas Co.	2-09-62	R/S #381
13039	Phillips Petroleum Co.	2-21-62	R/S #386
13732	Farmland Industries Inc.	11-16-62	
15156	SPG Exploration Corp.	8-07-63	
17203	....do	12-30-63	
17577	Exxon Corporation.	4-24-64	R/S #365
17887	Reading & Bates Petroleum Co.	9-21-64	R/S #2
17942	Arco Oil & Gas Company.	9-18-64	R/S #290
17978	Kerr-McGee Corporation.	9-22-64	
18002	Union Oil Co. of California.	11-30-64	R/S #94
18008	Farmland Industries Inc.	11-10-64	
18172	Union Oil Co. of California.	12-04-64	R/S #174
18258	Amerada Hess Corporation.	2-04-65	R/S #126
18438	Exxon Corporation.	4-30-65	R/S #375
18686	SPG Exploration Corp.	7-23-65	
18800	....do	10-27-65	
18808	Amoco Production Co.	10-29-65	R/S #649
18869	Arco Oil & Gas Co.	10-29-65	R/S #566
18911	May John L.	9-13-65	
18972	Southland Royalty Co.	1-03-65	CS66-1
19062	Amoco Production Co.	1-13-66	R/S #652
19102	....do	3-08-66	R/S #449
21016	Exxon Corporation	10-11-67	R/S #365
21634	Benson Mineral Group Inc.	3-29-68	CS72-402
23413	Texaco Producing Group Inc.	9-25-69	R/S #256
26316	Southland Royalty Co.	7-10-70	CS66-1
27094	Phillips 66 Natural Gas Co.	8-02-71	
27869	Kaneb Operating Company Ltd.	3-03-72	
28106	Texaco Producing Inc.	3-15-72	R/S #262
28108	Hunt Oil Company.	5-05-72	R/S #71
28739	Texaco Producing Inc.	9-27-72	R/S #268
29097	Grace W R & Company.	12-12-72	CS73-138
30533	Phillips Petroleum Co.	10-30-73	R/S #532
30534	....do	10-30-73	R/S #533
33693	Cabot Corporation	7-16-75	
34329	Union Texas Petroleum Corp.	1-05-76	R/S #137
34868	Phillips Petroleum Co.	5-21-76	R/S #590
35099	Mobil Oil Explor & Prod Se Inc.	7-19-76	R/S #524
35338	Exxon Corp	8-09-76	R/S #572
35465	....do	9-03-76	R/S #569
36124	Texaco Producing Inc.	2-24-77	R/S #106
36240	Fina Oil & Chemical Co.	3-17-77	
36537	Exxon Corp	5-13-77	R/S #587
36695	Union Exploration Prtnrs Ltd.	6-02-77	R/S #238
36735	Amoco Production Co.	6-03-77	R/S #745

Contract number	Producer name	Contract date	R/S or small producer docket
37460	Mobil-GC Corporation.	8-19-77	
37882	Amoco Production Co.	11-22-77	R/S #635
37921	Exxon Corporation.	11-23-77	R/S #611
37999	Cabot Corp	8-23-78	R/S #120
38000	do	8-23-78	R/S #121
38060	Kerr-McGee Corp.	12-16-77	R/S #153
38374	Felmont Oil Corporation.	3-03-78	R/S #28
38450	Cities Service Oil & Gas Corp.	2-14-78	
38472	do	3-17-78	R/S #478
38496	Monsanto Company.	3-17-78	R/S #137
38517	Elf Aquitaine Incorporated.	3-15-78	
38524	do	3-15-78	
38713	Cabot Corporation.	4-07-78	R/S #123
38754	Exxon Corporation.	5-02-78	R/S #619
39149	Amerada Hess Corporation.	5-25-78	R/S #172
39150	do	5-25-78	R/S #171
39172	Sante Fe Energy Corporation.	6-21-78	
39342	Texaco Incorporated.	8-16-78	R/S #180
39639	Sante Fe Energy Company.	9-01-78	
39721	Benson Mineral Group Inc.	9-27-78	CS72-402
39725	Mobil Oil Explor & Prod Se Inc.	9-14-78	R/S #559
39823	Union Texas Petroleum Corp.	9-05-78	R/S #150
39941	Exxon Corporation.	11-07-78	R/S #655
40303	Chevron USA Incorporated.	1-19-79	
40862	Amoco Production Company.	3-29-79	R/S #806
40863	do	3-29-79	
41220	Maxus Energy Corporation.	6-08-79	R/S #99
41221	Arco Oil & Gas Company.	6-12-79	R/S #743
41252	Cabot Corporation.	6-26-79	
41378	Cities Service Oil & Gas Corp.	7-16-79	R/S #440
41554	Champlin Petroleum Company.	8-14-79	
41687	Texaco Producing Inc.	8-31-79	
41705	Texas Incorporated.	9-17-79	
41914	Anadarko Production Company.	9-21-79	
42218	Mobil Oil Explor & Prod Se Inc.	11-08-79	
42221	Elf Aquitaine Incorporated.	11-06-79	
42223	Koch Industries Incorporated.	11-07-79	
42616	Felmont Oil Corporation.	1-31-80	
43242	Maxus Energy Corporation.	5-19-80	
43274	do	5-21-80	
43349	Amoco Production Company.	10-10-79	
43614	Sante Fe Energy Company.	7-01-80	
43778	Elf Aquitaine Incorporated.	7-30-80	
44447	Horner Richard R.	1-05-81	
44462	Arco Oil & Gas Company.	12-01-80	
44815	do	3-10-81	
46200	BelNorth Petroleum Corporation.	7-01-81	
46285	Sante Fe Energy Company.	11-03-81	
46655	Phillips 66 Natural Gas Co.	7-01-81	
46662	do	7-01-81	
46713	Cities Service Oil & gas Corp.	4-29-82	
46796	Mesa Operating Limited Prtnshp.	4-14-82	
46903	Kaiser-Francis Oil Company.	6-25-82	
50480	Maxus Energy Corporation.	1-01-83	
56090	Mobil Oil Explor & Prod Se Inc.	12-05-85	

Northwest Pipeline Corporation (Northwest)

Northwest Provided the following: Northwest Pipeline Corporation's List of First Sellers and Gas Purchase Contracts For Which Northwest *Protests* the First Seller's Assertion of Contractual Authority To Collect.

Delivery Allowances Pursuant to An Area Rate Clause:

First seller	Contract date	Rate schedule No.
Tenneco Oil Company [1].	April 05, 1965	292
	July 28, 1965	160
	February 25, 1966	198
Quinoco Petroleum Inc.[2].	January 25, 1977	19
	October 05, 1977	6
	October 12, 1977	9
	October 12, 1977	17
	October 12, 1977	18
	September 27, 1978.	11
Santa Fe Energy	May 23, 1972	N/A
	August 2, 1973	N/A
	July 1, 1980	N/A
BelNorth Petroleum Corp.	August 14, 1976	100

[1] Originally reported as Quinoco Petroleum Inc.
[2] Formerly GEO Oil and Gas Company.

Northwest Pipeline Corporation's List of First Sellers and Gas Purchase Contracts For Which Northwest *Protests* The First Seller's Assertion of Contractual Authority To Collect.

Delivery Allowances Pursuant to An Area Rate Clause:

First seller	Contract date	Rate schedule No.
Arco Oil & Gas Co	October 4, 1967	604
	June 12, 1967	312
BelNorth Petroleum Corp.	October 18, 1977	30
	July 01, 1980	5 and 6
	October 13, 1980	N/A
	November 26, 1980.	N/A
	April 17, 1981	1
BHP Petroleum	January 31, 1975	145
Chandler & Simpson.	November 21, 1966.	N/A
Chevron U.S.A., Inc.	January 27, 1960	99
	December 20, 1965.	108
	July 27, 1973	466
	May 30, 1978	N/A
	December 18, 1978.	N/A
	July 31, 1980	N/A
	March 16, 1981	N/A
	April 10, 1983	99
Conoco Inc.	August 25, 1961	408
Exxon Company, U.S.A.	August 23, 1957	210
	November 20, 1961.	296
Getty Oil Company	August 28, 1980	449
Martin Exploration Management.	May 18, 1979	N/A
	April 06, 1982	N/A
Mobil Oil Corporation.	June 06, 1972	484

Panhandle Eastern Pipe Line Company (Panhandle)

Panhandle submitted the following schedule of contracts receiving delivery allowance based on an area rate clause authorization:

Company name	Contract no.	Contract date
Texaco Producing Co. (Getty Oil Company)	82	04-02-62
Shell Western E&P	838	03-23-60
Reading & Bates Petroleum Co	3245	10-21-81
Mobil Oil Corporation	1137	08-11-69
Union Texas Petroleum Corp	668	07-02-65
Union Texas Petroleum Corp	1182	01-12-70
Diamond Shamrock Exploration Co	832	04-17-61
Energy Minerals Co	1712	01-02-76
J.M. Huber Corporation	456	09-21-35
Hucky Oil Co. (Marathon Oil Co.)	2063	02-13-78
Cites Svs Oil & Gas Corp	1830	10-11-76
Rodman Petroleum Corporation	2842	04-18-80
Premier Resources, Ltd.	1605	11-13-74
Premier Resources, Ltd	1626	12-16-74
Conoco, Inc	2367	11-10-78
Conoco, Inc.	2593	04-01-79

Sea Robin Pipeline Company (Sea Robin)

Sea Robin concurs with its first seller's claims and submitted the following list:

Contract	First seller	Rate schedule
311	Amerada Hess Corp	154
300	Amoco Production Co	533
306	Amoco Production Co	587
319	Amoco Production Co	570
334	Amoco Production Co	674
362	Amoco Production Co	735
389	Amoco Production Co	746
303	Anadarko Production Co	253
309	Anadarko Production	255
401	Canadian Superior Oil U.S.	254
412	Champlin Petroleum Co.	156
312	Chevron USA	51
321	Chevron USA	430
365	Cities Service Oil & Gas	444
421	Cities Service Oil & Gas	496
423	Conoco Inc	477
307	Crystal Exploration	CS
363	ECEE Inc	2
325	Exxon Corp	508
326	Exxon Corp	507
392	Exxon Corp	601
311	Louisiana Land & Explor	20
327	MESA Offshore	CS
357	Mobil Oil Corp	81
358	Mobil Oil Corp	68
390	Mobil Oil Corp	83
403	Mobil Oil Corp	99
415	Mobil Oil Corp	94
404	Mobil Oil Exploration	89
405	Mobil Oil Exploration	88
374	Newmont Oil Co	CS
420	Newmont Oil Co	CS
316	Oxy Petroleum Inc	CS
302	Pennzoil Producing	271
335	Pennzoil Producing	267
361	Pennzoil Producing	313
369	Pennzoil Producing	315
371	Pennzoil Producing	314
382	Pennzoil Producing	N/A
384	Pennzoil Producing	N/A
385	Pennzoil Producing	N/A
386	Pennzoil Producing	N/A
387	Pennzoil Producing	N/A
388	Pennzoil Producing	N/A
311	Phillips Petroleum Co	20
409	Phillips Petroleum Co	50
416	Phillips Petroleum Co	54
418	Phillips Petroleum Co	77
364	Pinto Inc	4
391	Pinto Inc	3
328	POGO	3
330	POGO	1
349	POGO	8
350	POGO	6
351	POGI	12
352	POGI	11
354	POGI	13
368	POGI	19
370	POGI	20
375	POGI	24
377	POGO	26
378	POGO	27
379	POGO	21
380	POGO	22
381	POGO	23
426	POGO	23
328	POGO	3
330	POGO	1
349	POGO	9
350	POGO	8
351	POGO	12
352	POGO	11
354	POGO	13
368	POGO	19
370	POGO	20
375	POGO	32
377	POGO	33
378	POGO	34
379	POGO	31
380	POGO	35
381	POGO	36
330	POGO	1
349	POGO	8
350	POGO	8
351	POGO	12
352	POGO	11
354	POGO	13
368	POGO	19
370	POGO	20
375	POGO	24
377	POGO	26
378	POGO	27
379	POGO	21
380	POGO	22
381	POGO	23
426	POGO	23
328	POGO	3
330	POGO	1
407	Sabine Production Co	13
373	Samedan Oil CS Corp	
399	Samedan Oil CS Corp	
417	Samedan Oil CS Corp	42
309	Shell Offshore Inc	458
313	Shell Offshore Inc	20
304	Sonat Exploration	14
333	Sonat Exploration	15
367	Sonat Exploration	2
301	Southern Natural Gas Co	F-9
331	Southern Natural Gas Co	F-12
372	Southland Royalty Co	38
397	Southland Royalty Co	93
419	Southland Royalty Co	125
394	Superior Oil Co	259
400	Superior Oil Co	275
366	TBP Offshore CS Co	
305	Texaco Production Inc	8
314	Texaco Production Inc	449
332	Texaco Production Inc	472
353	Texaco Production Inc	548
414	Union Expl Partners	254

Southern Natural Gas Company (Sonat)

Name	Contract date	Contract date	Rate schedule
Sonat Concurs in The Claims of the Following:			
Amax Petroleum	02-05-79	051000	NGPA
Amerada Hess Corp	05-16-78	043900	174
Do	04-09-69	025000	156
Amoco Production Co	10-01-80	021201	471
Do	07-15-80	056900	NGPA
Do	01-01-80	019002	442
Do	02-14-63	018000	373
Do	08-20-80	058400	828
Do	06-22-67	021500	502
Anadarko Production	08-08-72	029300	252
Arco Oil & Gas Co	08-09-67	021900	603
Do	05-07-51	001100	381
Do	05-18-74	036000	683
Do	02-20-79	010406	469
Do	08-09-67	022100	601
Do	09-01-78	007302	652
Do	04-01-78	009601	480
Do	07-01-81	068700	775
Do	02-26-73	031300	672
Do	06-01-82	014601	441
Do	08-09-82	022000	602
Bass, Perry R	10-01-80	014902	9
Do	08-01-84	017401	13
BHP Petroleum	11-01-80	012001	70
Do	01-01-81	012801	69
Calion Petroleum	07-15-80	056900	NGPA
Canadian Oxy	05-20-77	039900	5
Do	04-14-81	066300	CS71-636
Chevron U.S.A., Inc	04-01-79	005901	2
Do	06-01-79	009301	9
Do	04-01-79	010901	13
Do	06-01-79	009301	9
Do	02-13-75	036700	89
Do	06-01-79	009301	9
Do	11-01-78	007501	7
Do	12-01-78	007701	8
Do	05-30-79	048400	NGPA
Do	04-01-79	005901	2
Do	02-01-78	010202	2
Do	05-22-79	050700	169
Do	11-01-77	041700	155
Do	09-03-80	003101	18
Do	01-01-80	003401	16
Do	02-15-71	027900	67
Do	05-28-71	028100	70
Do	05-28-71	028200	71
Do	05-15-78	043600	159
Do	07-01-69	025800	50
Do	07-01-69	025800	50
Do	04-01-79	005901	2
Do	05-01-72	030000	76
Do	04-01-79	005901	2
Do	04-01-79	005901	2
Do	07-08-80	013001	17
Do	08-01-80	013805	188
Do	09-17-73	031600	82
Do	11-01-78	007501	7

SOUTHERN NATURAL GAS COMPANY (SONAT)—Continued

Name	Contract date	Contract date	Rate schedule
Cities Service Oil & Gas	05-09-73	033900	403
Do	09-05-80	058800	492
Conoco, Inc	09-01-81	012101	172
Do	08-05-57	008200	166
Do	09-01-81	012101	172
Do	05-03-77	039800	438
Do	05-09-73	033800	405
Do	08-01-80	058100	475
Cox, Edwin L	06-24-80	058500	CS77-189
Denovo Oil & Gas Inc	01-05-79	046300	NGPA
Diamond Shamrock Partners	09-25-79	052600	104
Do	06-13-77	040200	79
Dynamic Exploration	03-30-60	014300	CS72-773
Elf Aquitaine Petroleum	06-04-81	067600	1
Do	06-04-81	067300	NGPA
Do	08-05-69	026000	CS71-281
Do	06-04-81	067500	8
Do	06-04-81	067400	7
Exxon Corporation	03-25-68	023200	448
Do	06-29-72	030100	511
Do	10-04-79	002302	126
Do	07-01-83	012002	236
Do	07-01-83	015801	283
Do	12-24-80	061500	672
Do	08-16-79	050800	656
Do	07-01-83	017301	317
Do	07-17-86	016801	355
Do	02-27-68	023100	442
Do	02-23-68	025100	464
Felmont Oil Corp	11-27-79	053200	35
Do	11-22-78	047100	NGPA
Fina Exploration, Inc	02-01-82	001501	83
First Energy Corporation	06-18-81	072400	NGPA
Hunt Oil Company	06-04-74	035200	76
JFD, Inc	04-20-67	021600	CS71-432
Kerr McGee Corp	02-26-57	023400	51
Do	01-30-69	024500	109
Do	08-08-77	041300	147
Do	07-31-78	044301	160
Do	11-07-77	042100	152
Do	07-31-78	044601	159
Do	08-08-77	041500	148
Do	12-13-78	000801	19
Do	08-08-72	009020	105
Do	02-02-78	042700	154
Do	08-12-80	057400	52
Do	02-18-72	029500	116
Do	01-23-78	004502	52
Do	11-22-78	047100	NGPA

SOUTHERN NATURAL GAS COMPANY (SONAT)—Continued

Name	Contract date	Contract date	Rate schedule
Kirby Exploration	02-05-79	051000	NGPA
Do	10-03-66	020900	CS76-926
Koch Industries	01-29-81	066100	17
Do	11-22-78	047100	NGPA
Marthon Oil Co	12-29-76	042000	148
Do	04-09-69	025000	108
McMoran Exploration	10-01-82	000103	CS71
Minatome Corp	01-27-78	042500	NGPA
Do	02-18-71	028500	CS86-30
Do	02-01-78	004702	CS71-331
Mobil Oil E&P, S.E.	01-10-80	060500	109
Mobil Oil	08-23-78	002502	11
Do	09-11-72	030600	56
Do	09-11-72	030600	56
Do	10-09-69	026100	50
Do	02-27-57	004600	19
Do	07-20-78	044800	85
Do	10-01-81	072200	179
Do	07-09-74	035600	123
Do	05-04-82	014501	32
Do	11-22-78	047100	124
Mosbacher, Robert	06-28-57	007300	NGPA
OCFOGO, Inc	06-12-81	068100	NGPA
Odeco Oil & Gas Co	08-25-76	041900	545
Oxy Petroleum	07-22-82	074700	CS78-634
Pennzoil Oil & Gas	09-01-76	038500	29
Do	09-01-76	038600	17
Do	04-18-79	050500	369
Do	09-01-76	038400	17
Do	01-11-80	013804	188
Do	12-01-82	092000	341
Petro-Lewis Corp	04-01-50	005300	NGPA
Phillips Petroleum Co	01-01-78	000102	299
Do	01-30-69	024500	457
Do	08-08-77	000901	301
Do	08-08-77	041400	611
Do	02-27-78	043700	624
Do	02-09-79	000802	219
Do	11-07-77	042200	616
Do	09-01-79	052300	687
Do	02-01-78	004702	72
Do	09-29-67	022600	800
Do	12-01-78	008301	81
Do	04-09-69	025000	752
Do	02-01-78	004702	300
Do	06-01-79	049100	NGPA
Do	01-01-81	013901	38
Do	08-01-83	006506	175
Pogo Producing Co	12-29-80	064400	NGPA
Do	09-01-76	038500	42
Do	09-01-76	038600	17
Do	01-30-81	064300	NGPA
Do	04-18-79	050600	43

SOUTHERN NATURAL GAS COMPANY (SONAT)—Continued

Name	Contract date	Contract date	Rate schedule
Do	09-01-76	038400	17
Primos Production Co	04-01-50	005300	NGPA
Prosper Energy Corp	06-04-74	035200	9
Sabine Production Co	07-15-80	057600	NGPA
Do	05-12-69	025500	CS71-999
Shell Offshore, Inc	03-01-81	066800	NGPA
Do	01-13-78	042400	41
Do	05-07-75	037800	32
Do	07-01-79	049600	52
Do	07-01-79	049700	53
Do	08-01-78	045000	49
Do	06-27-68	024000	15
Do	08-27-68	024000	15
Do	08-27-68	024000	15
Do	08-18-76	235900	345
Do	10-03-66	020900	10
Do	10-03-66	020900	10
Shell Onshore Partnership	01-19-82	073600	NGPA
Sonat Exploration Co	11-24-80	060800	NGPA
Do	09-22-80	059300	11
Do	05-13-77	040100	4
Do	02-06-81	064500	13
Do	06-01-78	044100	4
Do	08-24-79	051100	8
Do	05-13-77	098300	19
Do	06-20-79	049400	6
Do	05-13-77	098700	20
Do	09-19-79	051900	10
Do	05-13-77	098900	NGPA
Do	03-16-79	046700	5
Do	09-04-79	051600	9
Do	02-05-81	064200	12
Do	06-19-79	049900	7
Do	11-10-78	007505	1
Do	11-24-80	060800	NGPA
Do	11-27-79	053400	NGPA
Do	12-15-78	044201	NGPA
Sun Exploration	08-05-69	026000	251
Do	08-15-62	017100	688
Tenneco Oil	05-09-73	034000	285
Texaco, Inc	04-06-66	020300	374
Texaco Producing, Inc	03-09-73	051500	428
Texoma Production	10-31-80	058800	NGPA
Triton Oil & Gas Corp	09-01-81	007801	CS71-1103
Union Exploration Ptnrs	02-18-72	029500	210
Union Exploration Ptnrs	02-14-78	004501	244

SOUTHERN NATURAL GAS COMPANY (SONAT)—Continued

Name	Contract date	Contract date	Rate schedule
Sonat states that it has not paid the invoices of the following:			
Dynamic Exploration	08-18-77	040900	CS72-773
Felmont Oil Co	11-22-78	047100	NGPA
Getty Oil Company	06-01-78	001301	68
Koch Industries	06-01-79	049000	NGPA

SOUTHERN NATURAL GAS COMPANY (SONAT)—Continued

Name	Contract date	Contract date	Rate schedule
Do	11-22-78	047100	NGPA
Marthon Oil Co	09-12-77	041600	148
Do	07-27-53	004200	103
Do	01-01-49	004100	103
Sabine Production Co	05-12-69	025500	CS71-999
Sonat Exploration Co	06-16-81	068000	17
Tenneco Oil Co	12-01-79	010006	60

SOUTHERN NATURAL GAS COMPANY (SONAT)—Continued

Name	Contract date	Contract date	Rate schedule
Do	10-24-80	060200	NGPA
Union Oil of California	01-23-80	054600	NGPA

Tennessee Gas Pipeline Company (Tennessee)

Tennessee concurs in the requests of the following:

Contract No.	Seller	Contract date	Rate schedule
0001	Goldston Oil Corp.	12-01-46	082-39
0001	Mosbacher, Robert	12-01-46	71-707
0001	Mobil (MPIM)	12-01-46	000028
0002	Suburban Propane	12-09-46	78-0027
0004	Texaco Prod., Inc	05-07-79	000232
0005	Gillring Oil Co	07-22-48	71-683
0007	Cities Service	10-27-7 [sic]	000009
0009	Sohio Pet Co	04-05-79	000134
0013	Mitchell Engy. Corp	09-01-86	00047
0015	Arco Oil & Gas Co	02-24-50	000332
0016	Chevron USA, Inc	02-17-83	000211
0019	Union Expl. Partners, Ltd	03-16-50	000120
0020	Conoco, Inc	06-05-50	000078
0022	Monsanto	08-04-50	079-88
0024	Mitchell Engy. Corp	01-01-81	0048&5
0025	Arco Oil & Gas Co	01-31-51	000349
0029	Amoco Production Co	02-06-85	000177
0033	Arco Oil & Gas Co	04-01-52	000346
0033	Mobil (MPIM)	04-01-52	00020
0034	Mobil (MPIM)	04-01-52	000031
0037	Amoco	08-01-52	000124
0037	Mobil	08-01-52	
0038	Exxon Co. USA	08-01-52	000006
0039	BYS, Inc	08-01-52	081-69
0039	Exxon Co. USA	08-01-52	000011
0041	Champlin Pet Co	08-15-52	000005
0043	American Petrofina	01-01-80	000060
0046	Sun Expl. & Prod. Co	12-01-52	000011
0051	Texaco, Inc	06-10-53	000054
0052	Carr, Edith Backus Trust	08-17-84	
0054	Berry, Philip B	11-03-53	080-38
0054	Conoco	11-03-53	76-1116
0054	Tenneco Oil Co	06-27-79	074-86
0057	Samson Res. Co	06-27-79	074-86
0061	Texaco Prod., Inc	03-25-7	000270
0066	Champlin Pet Co	12-29-82	000003
0066	Sun Exploration	12-29-82	
0068	Erso, Inc	05-01-79	71-708
0071	Texaco Prod., Inc	09-01-79	000454
0074	Arco Oil & Gas Co	11-01-54	000491
0082	Sun Expl. & Prod. Co	02-01-55	
0084	Sun Expl. & Prod. Co	09-14-77	000303
0088	Arco Oil & Gas Co	04-01-55	000355
0090	Arco Oil & Gas Co	04-01-55	000356
0094	Mobil (Mepna)	05-08-80	000010
0095	Coates Energy	05-10-55	
0096	Arco Oil & Gas Co	05-24-55	000124
0099	Byles, W.M.	07-11-55	
0101	Texaco	07-01-80	87-39
0103	Bright & Co	10-17-55	71-70
0103	Clark, J.O., Jr	10-17-55	71-438
0104	Mobil (MPTM)	11-10-55	000018
0110	Texas Prod., Inc	07-19-82	000276
0111	Arco Oil & Gas Co	01-31-56	000158
0113	Conoco, Inc	01-31-56	000138
0115	Chevron USA, Inc	07-18-78	000248
0116	Chevron USA, Inc	06-30-78	000249
0122	Chevron USA, Inc	07-17-78	000250
0124	Arnold, Daniel C	05-04-84	
0124	Bintliff, David C	05-04-84	71-422

Contract No.	Seller	Contract date	Rate schedule
0124	Moss, Margaret B	05-04-84	
0124	Wheless Industries, Inc	05-04-84	71-305
0124	WWF Oil Corp	05-04-84	71-833
0125	Shell Offshore, Inc	05-18-79	000002
0126	Tenneco Oil Co	07-20-79	000143
0127	Shell (SWEPI)	10-06-76	000028
0129	Arco Oil & Gas Co	06-25-56	000526
0135	Arco Oil & Gas Co	08-10-56	000185
0137	Cities Service O&G Corp		08-14-56000180
0138	Texaco Prod., Inc	08-14-56	000072
0139	Arco Oil & Gas Co	03-01-58	000420
0159	Arco Oil & Gas Co	03-01-58	000420
0160	Arco Oil & Gas Co	03-01-58	000532
0161	Mobil (MPTM)	03-01-58	000055
0164	Sun Expl. & Prod. Co	03-01-58	000364
0167	Sun Expl. & Prod. Co	04-01-58	0104
0168	Energy Reserves	06-02-78	
0171	Shell Offshore Inc	10-05-77	000004
0172	Graham Engy. Ltd	05-18-79	
0173	Mobil (MOEPSI)	09-27-78	000022
0175	Newmont Oil Co	06-01-81	71-510
0177	Louisiana-Hunt Pet Corp	10-12-79	
0178	Louisiana-Hunt Pet Corp	11-01-79	
0178	Placid Oil Co	11-01-79	000027
0178	Rosewood Resources, Inc	11-01-79	
0179	Exxon Co. USA	10-11-79	000163
0180	Exxon Co. USA	10-11-79	000164
0181	Exxon Co. USA	10-11-79	000165
0183	Chevron USA, Inc	02-08-80	000297
0185	Shell Offshore, Inc	11-01-79	000007
0186	Getty Oil Co	11-01-79	00(24)
0186	Hunt Hassie Expl. Co	11-01-79	00024
0186	Sohio Pet Co	11-01-79	000125
0189	Louisiana Land & Expl. Co	03-03-80	00(44)
0189	Union Expl. Partners, Ltd	03-03-80	000044
0190	Chevron USA, Inc	07-11-80	000300
0191	Arco Oil & Gas Co	08-20-59	000230
0192	Cities Svs O&G Corp	08-31-59	000186
0193	Texaco Prod., Inc	09-08-59	000107
0195	Conoco, Inc	09-25-59	000183
0198	Northern Pump Co	04-11-80	71-022
0199	Exxon Co. USA	10-11-79	000169
0203	Amoco Production Co	10-11-79	000284
0205	Exxon Co. USA	11-01-79	000241
0215	BHP Pet (Americas), Inc	08-26-80	000015
0217	Arco	03-01-60	78-0673
0218	Chevron USA, Inc	06-05-80	000424
0224	Edwing, Berry	03-25-60	000017
0224	Energy Reserves	03-25-60	
0226	Exxon Co. USA	08-01-85	000274
0228	Texaco, Inc.	04-08-60	000217
029	Carri Oil	04-11-60	073-19
0230	Anadarko Prod. Co	01-06-82	000002
0230	Terra Resources	01-06-82	
0231	Brown Curtiss	10-16-81	(71-270)
0231	Gruy Management	10-16-81	(71-270)
0232	Mobil (MOEPSI)	04-27-60	000115
0236	Texaco, Inc	07-01-60	000221
0237	Mobil (Mepna)	07-07-60	000036
0239	Cox, Edwin L	08-19-60	77-189
0241	Fina Oil & Chemical Co	01-11-81	
0247	Sun Expl & Prod., Co	10-04-60	000125
0249	Tenneco Oil Co	04-02-82	000140
0253	Exxon Co. USA	08-01-85	000269
0261	Texaco, Inc	03-10-61	000237
0263	Cities Svs, O&G Crop	08-27-82	000187
0264	Conoco, Inc	03-11-83	000201
0265	Arco Oil & Gas Co	03-24-83	000235
0266	Texaco Prod., Inc	07-15-82	000112
0267	Amerada Hess Corp	08-24-61	000091
0268	Bourg, Harry, Corp	09-15-61	71-819
0271	Tenneco Oil Co	11-01-61	000016
0274	Union Expl. Partners LTD	12-07-61	
0275	Sun Expl. & Prod. Co	12-18-61	000147
0276	Exxon Co. USA	08-01-85	000300
0278	Conoco, Inc	09-06-83	000213
0280	Newmont Oil Co	12-09-85	71-510
0283	Pennzoil Co	05-18-62	00(84)
0283	Phillips Pet Co	05-18-62	000662
0284	Tenneco Oil Co	07-01-62	000128
0285	Tenneco Oil Co	07-01-62	000129
0283	Eubanks, B.R. (M.D.)	08-24-62	

Contract No.	Seller	Contract date	Rate schedule
0290	Chevron USA, Inc	08-24-62	000364
0292	Louisiana-Hunt Pet Corp	08-24-82	
0292	Placid Oil Co	08-24-62	000034
0294	Sun Expl. & Prod. Co	08-24-62	000160
0295	Mobile (MOEPSI)	08-24-62	000116
0300	Exxon	08-08-63	71-919
0301	Enstar Corp	10-30-63	000N/A
0303	Chevron USA, Inc	03-09-64	00372
0307	Mobile (MOEPSI)	05-03-65	000036
0310	Chevron USA, Inc	08-01-65	000392
0311	Chevron USA, Inc	08-01-65	000391
0314	Pennzoil Co	03-22-82	000139
0215	Tenneco Oil Co	04-05-66	000204
0316	Exxon Co. USA	08-01-85	000395
0318	Texaco, Inc	09-01-81	000373
0317	Conoco, Inc	06-30-66	000338
0319	Texaco Prod. Inc	07-05-66	000162
0320	Arco Oil & Gas Co	07-08-66	00319
0321	Cities Svs. O&G Corp	07-12-66	
0331	Tenneco Oil Co	11-01-67	000239
0333	Tenneco Oil Co	11-01-67	000246
0334	Tenneco Oil Co	11-06-67	000247
0335	Tenneco Oil Co	11-01-67	000241
0337	Tenneco Oil Co	11-01-67	83-72
0338	Tenneco Oil Co	11-01-67	000250
0339	Tenneco Oil Co	11-01-67	000251
0340	Koch Industries, Inc	11-20-67	76-73
0340	Phillips Pet Co	11-20-67	000047
0340	Tenneco Oil Co	11-20-67	000227
0345	Tenneco Oil Co	05-17-68	000303
0346	Chevron USA, Inc	05-29-68	000464
0347	Cities Svs. O&G Corp	06-20-68	000228
0348	Arco Oil & Gas Co	06-27-68	000320
0349	Texaco Prod., Inc	07-01-68	000163
0350	Conoco, Inc	07-02-68	000341
0351	Exxon Co. USA	07-26-68	000451
0352	Mobil (MOEPSI)	08-02-68	000046
0357	Arco Oil & Gas Co	01-02-69	000324
0359	Shell Offshore, Inc	01-02-69	000016
0360	Phillips Pet Co	03-17-69	000805
0360	Chevron USA Inc	03-17-69	000468
0365	Cities Svs. O&G Corp	04-22-69	000315
0366	Conoco, Inc	04-22-69	000350
0368	Arco Oil & Gas Co	04-28-69	000627
0369	Texaco Prod., Inc	04-28-69	000177
0372	Chevron USA, Inc	05-29-69	000471
0375	Exxon Co. USA	10-07-69	000407
0377	Amoco Production Co	10-30-69	000544
0378	Chevron USA, Inc	11-25-69	000480
0379	Penzoil Co	12-01-69	000110
0383	Cities Svs. O&G Corp	12-16-69	000322
0384	Texaco Prod., Inc	12-18-69	000178
0385	Arco Oil & Gas Co	12-19-69	000355
0386	Conoco, Inc	12-19-69	000355
0387	Arco Oil & Gas Co	01-05-70	000632
0388	Cities Svs. O&G Corp	01-05-70	000323
0389	Conoco, Inc	01-05-70	000356
0390	Texaco Prod., Inc	01-05-70	000180
0395	Mobil (MPTM)	01-01-76	000026
0396	Arco Oil & Gas Co	05-01-70	000635
0397	Cities Svs. O&C corp	05-01-70	000331
0398	Conoco, Inc	05-01-70	000363
0399	Texaco Prod., Inc	05-01-70	000183
0401	Sevarg Co., Inc	08-25-70	78-763
0401	Sun Expl. & Prod., Co	08-25-70	000717
0404	Texaco, Inc	10-28-70	000453
0405	Conoco, Inc	10-29-70	000364
0406	Texaco Prod., Inc	10-29-70	000185
0407	Mobil (MEPNA)	11-19-70	000063
0412	Tenneco Oil Co	01-01-71	000273
0415	Tenneco Oil Co	02-01-71	000277
0417	Texaco Prod., Inc	05-11-83	000013
0419	Arco Oil & Gas Co	05-01-71	000005
0420	Texaco, Inc	06-01-71	000464
0422	Amoco	02-06-85	(86-91)
0423	Amoco	06-07-71	000263
0426	Texaco, Inc	07-12-71	000459
0428	Weaver, W. Carlton	07-27-71	71-517
0432	Exxon Co. USA	09-01-71	000498
0433	Amoco Production Co	09-27-71	000576
0434	Tenneco Oil Co	10-01-71	000276
0437	Chevron USA, Inc	10-21-71	000072

Contract No.	Seller	Contract date	Rate schedule
0440	Mobil (MPTM)	01-01-76	000038
0445	Shell Oil	01-13-78	083-72
0446	Amerada Hess Corp	01-07-72	000160
0449	Conoco, Inc	01-01-81	000378
0450	Hewitt & Dougherty	03-15-72	(71-454)
0462	Shell Offshore, Inc	07-15-72	000024
0470	Mobil (MOEPSI)	08-14-72	000055
0474	Sun Exploration	10-20-72	000663
0474	Odeco Oil & Gas Co	10-20-72	000043
0474	Pelto Oil Co	10-20-72	
0475	Cities Svs. O&G Corp	10-20-72	000396
0475	Odeco Oil & Gas Co	10-20-72	000041
0476	Sun Exploration	10-20-72	000390
0476	Odeco Oil & Gas Co	10-20-72	000042
0476	Odeco Oil & Gas Co	10-20-72	
0476	Conoco	10-20-72	
0480	Cities Svs. O&G Corp	11-14-72	000400
0481	Conoco, Inc	11-14-72	000401
0482	Arco Oil & Gas Co	12-22-72	000664
0483	Cities Svs. O&G Corp	12-22-72	000398
0484	Conoco, Inc	12-22-72	000399
0485	Texaco Prod., Inc	12-22-72	000204
0486	Marathon Oil Co	02-01-84	000065
0487	Hunter Co., Inc	04-23-82	72-559
0488	Arco Oil & Gas Co	02-15-80	000006
0489	Arco Oil & Gas Co	02-16-73	000007
0490	Sun Expl. & Prod., Co	02-16-78	000390
0491	Arco Oil & Gas Co	03-01-73	000148
0492	Arco Oil & Gas Co	03-23-71	000003
0494	Texaco Prod., Inc	12-19-78	000011
0498	Sun Expl. & Prod. Co	05-01-78	000009
0499	Sun Expl. & Prod. Co	06-21-78	
0504	Fina Oil & Chemical Co	07-01-79	000094
0506	Texaco, Inc	07-05-73	000498
0508	Tenneco Oil Co	08-06-73	000286
0511	Marshall Expl., Inc	01-13-82	71-853
0515	Tenneco Oil Co	10-30-73	000288
0518	Mosbacher, Robert	09-01-80	71-707
0521	Progess Pet Co	11-28-73	074-10
0523	Fair Opting Acct	01-12-79	
0523	Fina Oil & Chemical Co	01-12-79	000072
0524	Arco Oil & Gas Co	01-01-74	000303
0525	Chevron USA, Inc	01-01-74	000053
0527	Conoco, Inc	01-01-74	000413
0528	Champlin Pet Co	03-01-78	000007
0529	Champlin Pet Co	01-01-74	000004
0530	Champlin Pet Co	01-01-74	000021
0531	Fair Opting Acct	05-24-85	71-759
0535	Goldston Oil Corp	01-01-74	082-39
0537	Sohio Pet Co	03-01-78	000003
0538	Sohio Pet Co	03-01-78	000004
0539	Arco Oil & Gas Co	05-02-49	000004
0539	Sohio Pet Co	01-01-79	000020
0539	Sun Expl. & Prod. Co	05-02-49	000037
0544	Odeco Oil & Gas Co	05-17-74	000014
0545	Pelto Oil Co	05-17-74	76-461
0550	Texaco, Inc	05-01-80	000059
0553	Texaco, Inc	05-01-80	000056
0554	Texaco, Inc	05-01-80	000260
0554	Texaco, Inc	05-01-80	000260
0556	Texaco, Inc	06-14-74	000508
0557	Texaco Prod., Inc	05-07-79	000012
0559	Tenneco Oil Co	07-10-74	000298
0567	Goldston Oil Corp	01-01-81	082-39
0567	Sun Expl. & Prod. Co	01-10-81	
0568	Sun Expl. & Prod. Co	09-19-74	000171
0569	Sun Expl. & Prod. Co	09-19-74	000170
0570	Phillips Pet Co	09-27-74	000763
0571	Texaco, Inc	05-01-80	000055
0575	Phillips Pet Co	10-22-74	000330
0576	Phillips	10-22-74	
0580	Energy Reserves	11-08-74	000016
0581	Enserch Expl., Inc	11-14-54	000117
0582	Big "6" DRLG Co	12-31-74	71-1029
0587	Arco Oil & Gas Co	01-28-75	000505
0588	Superior Oil Co	07-15-76	000002
0591	Conoco, Inc	02-07-75	000418
0592	Cities Svs. O&G Corp	02-10-75	000415
0598	Amerada Hess Corp	04-29-80	000007
0600	Cities Svs. O&G Corp	05-01-80	000364
0601	Mitchell Energy	05-01-80	82-057
0603	Mitchell Engy. Prod. Corp	05-01-80	

Contract No.	Seller	Contract date	Rate schedule
0605	Conoco, Inc	05-12-75	000133
0606	Cities Svs. O&G Corp	05-22-75	000426
0607	Champlin Pet Co	06-11-75	000097
0610	Tenneco Oil Co	06-12-75	86-097
0611	Tenneco Oil Co	06-13-75	000308
0620	Texaco Prod., Inc	07-14-75	000216
0621	Texaco, Inc	07-14-75	000521
0623	Chevron USA, Inc	07-24-75	000090
0624	Phillips Pet Co	07-25-75	000686
0625	Texaco, Inc	07-31-80	000528
0626	Southland Royalty Co	08-06-75	000076
0628	Odeco Oil & Gas Co	08-20-75	000013
0630	Valhi, Inc	09-05-75	76-165
0631	Sun Expl. & Prod. Co	01-01-80	000258
0632	Texaco, Inc	09-15-75	000529
0634	Conoco, Inc	09-24-75	000426
0636	Cities Svs. O&G Corp	10-01-75	000429
0637	Cities Svs. O&G Corp	10-14-75	000430
0642	Texaco, Inc	12-30-75	000593
0643	Sun Expl. & Prod. Co	01-01-81	000072
0644	Sun Expl. & Prod. Co	01-01-81	000070
0645	Tenneco Oil Co	01-15-76	000344
0648	Tenneco Expl. Ltd	02-26-76	000015
0653	Texaco, Inc	06-01-76	000540
0655	Texaco Prod., Inc	06-07-76	000220
0657	Tenneco Oil Co	06-15-76	000321
0658	Cockrell V H Est. Dec	06-16-76	
0658	Shell Offshore Inc	06-16-76	000001
0661	Texaco Prod., Inc	06-17-76	000218
0662	Sun Expl. & Prod. Co	07-14-81	000013
0663	Texaco, Inc	07-30-76	000146
0664	Mobil (MOEPSI)	08-03-76	000075
0665	Tenneco Oil Co	08-06-76	000322
0666	Tenneco Oil Co	08-06-76	000323
0668	Cities	08-26-76	000004
0669	Tenneco Oil Co	08-26-76	000324
0670	Chevron USA, Inc	08-16-76	000004
0670	Getty	08-16-76	000004
0672	Amoco Production Co	09-10-76	000723
0685	MESA Pet Co	01-17-77	000083
0686	Mobil (MPIM)	03-11-77	000141
0689	Texaco, Inc	04-07-77	000546
0693	Tenneco Oil Co	04-11-77	000327
0694	Marshall Expl., Inc	05-13-77	71-853
0695	Tenneco Expl., Ltd	05-18-77	000022
0703	Pelto Oil Co	07-20-77	76-461
0704	Clovelly Oil Co., Inc	05-17-82	75-473
0704	Little Lake	05-17-82	75-475
0705	Clovelly Oil, Co., Inc	05-17-82	75-473
0705	Little Lake Oil Co	05-17-82	83-085
0706	Mesa Pet Co	08-08-77	000089
0707	Mesa Pet Co	08-08-77	000087
0708	NRM operating Co. LP	08-08-77	74-154
0710	Amoco Production Co	08-03-77	000750
0711	Mobil (MOEPSI)	08-25-77	000078
0712	Tenneco Oil Co	08-31-77	000332
0713	Tenneco Oil Co	08-31-77	000331
0714	Southland Royalty Co	08-30-77	000080
0715	Texaco, Inc	09-30-77	000551
0716	Sabine Corp	09-23-77	066-96
0717	Sabine Corp	09-23-77	066-96
0727	Tenneco Oil Co	10-01-79	00336
0728	Tenneco Oil Co	10-01-79	000335
0742	Mesa Pet Co	04-04-78	000097
0744	Tenneco Oil Co	04-14-78	000341
0745	Odeco Oil & Gas Co	04-14-78	000024
0748	Tenneco Oil Co	04-25-78	000339
0750	Tenneco Expl. Ltd	05-18-78	000013
0752	Shell Offshore	05-01-78	000498
0753	Pelto Oil Co	05-24-78	76-461
0754	Pelto Oil Co	06-01-78	76-461
0765	Houston Oil & MNRLS CORP	04-01-78	000N/A
0768	Sue-Ann Operating Co	08-11-78	79-524
0769	Texaco, Inc	08-25-78	000586
0770	Copeland John L	08-01-78	78-738
0783	Carter Expl. Co	10-09-78	76-418
0790	Mco Res (Integrated) Corp	11-30-78	
0791	Clovelly Oil Co Inc	12-07-78	000N/A
0792	Kerr-McGee Corp	12-01-78	000161
0794	Nelson Jon J	12-14-78	000N/A
0795	Cabot Pet Corp	12-01-78	000070
0797	Shettle, George O	12-29-78	000N/A

Contract No.	Seller	Contract date	Rate schedule
0807	Texaco Oil Corp	01-04-79	000588
0813	Felmont Oil Corp	12-01-78	000032
0817	Goldston Oil Corp	01-02-79	000N/A
0818	Car-Tex Prod. Co	01-24-79	
0818	Marshall Expl., Inc	01-24-79	000N/A
0821	Tenneco Oil Co	02-05-79	86-097
0822	Moore McCormack	01-29-79	000N/A
0827	Fina Oil & Chemical Co	01-30-79	000N/A
0828	Tenneco Oil Co	02-27-79	000352
0829	Tenneco Oil co	02-27-79	000353
0837	Conoco	03-14-79	000460
0843	Sevarg Co., Inc	03-20-79	00N/A
0844	Tenneco Oil Co	03-27-79	000354
0850	Mullins & Prichard	04-19-79	000N/A
0851	Arco Oil & Gas Co	04-19-79	000N/A
0856	Brooklyn Union Expl. Co., Inc	05-02-79	000N/A
0860	Kerr-McGee Corp	05-11-79	000165
0861	Kerr-McGee Corp	05-11-79	000166
0862	Cities Svs. O&G Corp	05-23-79	000482
0872	Samedan Oil Corp	05-31-79	71-430
0873	Sante Fe Engy. Co	06-06-79	71-208
0874	Samedan Oil Corp	05-31-79	71-430
0875	Texaco, Inc	06-19-79	000590
0877	Tenneco Expl., Ltd	06-21-79	000018
0878	Tenneco Oil Co	06-27-79	000416
0879	Civego In	06-19-79	
0879	Sun Expl. & Prod. Co	06-19-79	000N/A
0884	Shell Oil	04-28-79	000N/A
0892	Erso, Inc	05-01-79	(71-1150)
0896	Mobil (MOEPSI)	06-04-79	000111
0897	Tenneco Oil Co	07-25-79	000417
0900	Pennzoil Co	07-27-79	000309
0901	Union Expl. Partners Ltd	08-03-79	000260
0902	Texaco, Inc	07-18-79	000N/A
0903	Texaco, Inc	07-18-79	000N/A
0905	Amoco Production Co	08-06-79	000811
0906	Crest Res. & Expl. Corp	08-14-79	000N/A
0909	Golston Oil Corp	08-14-79	000N/A
0912	Conoco	08-28-79	000463
0917	Tenneco Expl., Ltd	09-07-79	000020
0919	Texaco, Inc	09-06-79	000N/A
0920	Texaco, Inc	09-06-79	000N/A
0921	Phillips Pet Co	08-01-79	000803
0924	Samedan Oil Corp	09-17-79	71-430
0925	Texaco Prod., Inc	09-26-79	000442
0930	SMK Energy Corp	10-10-79	85-014
0932	Louisiana Land & Expl. Co	10-12-79	000N/A
0933	Hewitt and Dougherty	08-01-79	000N/A
0934	Exxon Co. USA	10-18-79	000N/A
0935	Amax Petroleum	08-20-79	000N/A
0936	Samedan Oil Corp	09-26-79	71-430
0941	Texaco Prod., Inc	06-14-79	000229
0946	Tenneco Oil Co	10-01-79	000293
0948	Exxon Co. USA	10-11-79	000234
0955	Tenneco Oil Co	11-21-79	000N/A
0956	Wilshire Oil Co of Texas	11-07-79	72-629
0960	Champlin Pet Co	03-01-78	000008
0963	Pelto Oil Co	11-08-79	96-461
0979	Texaco, Inc	01-08-80	000N/A
0984	Chevron USA, Inc	01-09-80	000N/A
0990	Arco Oil & Gas Co	02-21-80	000N/A
0991	Southland Royalty Co	03-03-80	000103
1002	Union Expl. Partners, Ltd	04-03-80	000259
1008	Valhi, Inc	05-14-80	76-165
1009	Shell Offshore	05-07-80	000499
10011	Sun Expl. & Prod	05-07-80	078-19
1017	Texaco Prod., Inc	06-03-80	000446
1018	Odedco	06-12-80	000N/A
1021	Tenneco Oil Co	06-19-80	000422
1033	Phillips Pet Co	07-08-80	000053
1034	Phillips Pet Co	07-10-80	000733
1037	Tenneco Oil Co	07-18-80	000421
1039	Pennzoil Co	07-25-80	000N/A
1040	Union Expl. Partners, Ltd	07-25-80	000261
1042	Arco Oil & Gas Co	07-28-80	000754
1044	Tenneco Oil Co	08-01-80	000N/A
1045	Tenneco Oil Co	08-01-80	000N/A
1046	Tenneco Oil Co	08-01-80	000N/A
1050	Arco Oil & Gas Co	08-13-80	000765
1051	Sabine Production Co	08-13-80	000012
1053	Sun Expl. & Prod. Co	08-15-80	000741
1056	Abraxas Pet Corp	07-21-80	000N/A

Contract No.	Seller	Contract date	Rate schedule
1058	Tenneco Oil Co	08-21-80	000423
1060	Sun Expl. & Prod. Co	08-28-80	000N/A
1061	Mobil (MOEPSI)	08-20-80	000127
1067	Towner	12-09-85	
1077	Stone Oil Corp. (Manager)	09-01-80	72-722
1078	Cities Svs. O&G Corp	05-01-80	000376
1080	Amoco Production Co	10-20-80	000829
1081	King Ranch, Inc	10-23-80	79-340
1082	Mission O&G Prog 1979-I	10-24-80	000N/A
1083	Pennzoil Co	10-24-80	000N/A
1089	Moore McCormack Engy., Inc	09-01-80	78-608
1090	Harkins & Co	10-15-80	000N/A
1092	B&P Oil Co	09-01-80	76-913
1094	Tenneco Oil Co	10-30-80	000428
1095	Samedan Oil Corp	10-30-80	000043
1101	Chevron USA, Inc	11-21-80	000181
1104	Conoco, Inc	12-17-80	000474
1105	Tenneco Oil Co	12-01-80	000N/A
1107	Cities Svs. O&G Corp	12-23-80	000494
1108	Arco Oil & Gas Co	12-23-80	000764
1109	Texaco Prod., Inc	12-23-80	000480
1112	Inexco Oil Co	12-22-80	000N/A
1118	Murphy Oil USA, Inc	11-13-80	000034
1119	Anadarko Prod. Co	01-27-81	000261
1122	Zapata Exploration Co	02-03-81	000002
1123	Texas Eastern Expl. Co	01-27-81	000026
1126	Elf Aquitaine, Inc	02-10-81	000N/A
1131	Houston Oil & MNRLS Corp	02-27-81	
1134	Pennzoil Co	03-02-81	000N/A
1136	Shell (SWEPI)	01-01-81	000N/A
1141	Belnorth Petroleum Co	02-16-81	
1142	Texaco, Inc	04-07-81	000N/A
1143	Amoco Production Co	03-16-81	000N/A
1144	Mobil (MOEPSI)	04-01-81	
1146	Kerr-McGee Corp	04-16-81	000183
1150	Stone Oil Corp	04-24-81	000N/A
1156	Tenneco Oil Co	05-21-81	000430
1157	Louisiana Land & Expl. Co	05-01-81	000N/A
1158	Phillips Pet Co	03-01-81	000N/A
1159	Phillips Pet Co	03-01-81	000068
1160	Phillips Pet Co	03-01-81	000688
1161	Arco Oil & Gas Co	05-14-81	000771
1165	Mobil (MOEPSI)	04-02-81	000130
1178	Arco Oil & Gas Co	07-08-81	000773
1188	Louisiana Land & Expl. Co	07-24-81	000N/A
1189	Louisiana Land & Expl. Co	07-24-81	000N/A
1194	Samedan Oil Corp	08-05-81	000045
1195	Tenneco Oil Co	08-05-81	000431
1197	Tenneco Oil Co	08-05-81	000N/A
1208	Graham Expl. Ltd-1980 B-1	08-19-81	000N/A
1214	Huber, J.M. Corp	01-01-81	000020
1224	Sanchez-O'Brien 1980 Int-I	09-28-81	000N/A
1225	Eason	10-06-81	000N/A
1238	Gillring Oil Co	10-09-81	000N/A
1240	Amerada Hess Corp	08-11-81	000192
1243	Pyro	08-05-81	000N/A
1247	Kimble Floyd E	10-16-81	000N/A
1260	Texaco Prod., Inc	11-11-81	
1268	Louisiana-Hunt	11-16-81	
1268	Placid Oil Co	11-16-81	000028
1269	PCU, Inc	11-16-81	000N/A
1271	Chevron USA, Inc	11-23-81	000N/A
1272	Texaco, Inc	12-09-81	000N/A
1276	Grace Pet Corp	12-02-81	000N/A
1280	Marshall Expl., Inc	01-13-82	000N/A
1292	Sun Expl & Prod. Co	02-22-82	000N/A
1293	Marshall Expl., Inc	01-29-82	000N/A
1300	Goldston Oil Corp	03-04-82	
1301	Goldston Oil Corp	03-04-82	000N/A
1310	Barbour Energy Corp	12-02-81	000N/A
1313	Sun Expl. & Prod. Co	03-18-82	000N/A
1319	Florida Expl	03-25-82	000N/A
1344	Conoco, Inc	04-30-82	000258
1346	Placid Oil Co	05-14-82	000N/A
1347	Belden & Blake Corp	03-19-82	000N/A
1349	EIF Aquitane	04-29-82	
1369	PNB Petroleum Corp	06-21-82	
1386	Placid Oil Co	07-12-82	000N/A
1394	Chevron USA, Inc	07-19-82	000N/A
1400	Fentress Gas Transport	03-10-82	000N/A
1405	Tenneco Oil Co	08-16-82	000440
1411	Samedan Oil Corp	08-09-82	000047

Contract No.	Seller	Contract date	Rate schedule
1412	Odeco Oil & Gas Co	08-12-82	00044
1413	Koch Industries, Inc	08-06-82	000020
1414	Kerr-McGee Corp	08-10-82	000187
1415	Phillips Pet Co	08-11-82	000663
1416	Felmont Oil Corp	07-29-82	000048
1419	Cabotpet Corp	08-13-82	000077
1420	ICI Delaware, Inc	08-09-82	0084-3
1423	Champlin	08-27-82	000N/A
1428	Maj. A Partnership	08-27-82	000N/A
1439	Texaxo Prod., Inc	09-10-82	000536
1445	NFC Pet Corp	08-31-82	000N/A
1455	Texaco, Inc	11-02-82	000607
1463	Placid Oil Co	11-19-82	000N/A
1468	Cities	01-05-83	000009
1483	Tenneco Oil Co	03-01-83	000N/A
1489	Texaco Prod., Inc	07-15-83	000542
1507	Sanchez-O'Brien 1980 Int'l	01-18-84	000N/A
1512	Cities	01-28-84	000N/A
1525	Louisiana Land & Expl. Co	05-11-84	000N/A
1526	Louisiana Land & Expl. Co	05-11-84	000N/A
1529	Louisiana Land & Expl. Co	06-04-84	00045
1531	Louisiana Land & Expl. Co	06-22-84	00046
0010	Conoco, Inc	04-01-49	00391
0010	Ralph E. Fair	04-01-49	71-760
0010	Fair Operating Acct	04-01-49	71-759
0010	Tenneco Oil Co	04-01-49	0284
0010	Terra Resources, Inc	04-01-49	00045
0053	Colorado Oil & Gas	09-29-53	00071
0053	Houston O&G Co., Inc	09-29-53	71-571
0111	Arco Oil & Gas Co	01-31-56	000158
0112	Cities Svs. O&G Corp	01-31-56	000505
0112	Canadianoxy OFSH Prod. Co	01-31-56	000001
0112	Cities Svs. O&G Corp	01-31-56	000505
0123	Alexander Clyde H II Trst	11-07-83	
0123	Alexander Creston H	11-07-83	77-275
0123	Alexander Glenn E	11-07-83	77-274
0123	Alexander Helen Mae	11-07-83	76-918
0123	Alexander, L.M. Trst	11-07-83	
0123	Alexander, Margaret Y	11-07-83	
0123	Briggs, Ben R	11-07-83	
0123	Briggs, Hugh M	11-07-83	
0123	Champlin Pet Co	11-07-83	000022
0123	Creslenn Ranch Co	11-07-83	
0123	Dimit, Charles E	11-07-83	
0123	Kinsey, Norman V	11-07-83	71-638
0123	Kinsey, Norman V. Trst	11-07-83	
0123	Phillips Oil Co	11-07-83	
0123	Schroeder, Kay A. Trst	11-07-83	
0123	Wright, Jean A. Trst	11-07-83 [sic]	
0124	Arnold, Daniel C	05-04-84	
0124	Bintliff, David C	05-04-84	71-422
0124	Moss, Margaret B	05-04-84	
0124	Wheless Industries, Inc	05-04-84	71-305
0124	WWF Oil Corp	05-04-84	71-833
0125	Shell Offshore, Inc	05-18-79	000002
0126	Tenneco Oil Co	07-20-79	000143
0127	Shell (SWEPI)	10-06-76	0000028
0128	Arnold, Isaac	10-02-76	71-749
0128	Arnold, Issac, Jr	10-02-76	71-607
0128	Bank of the SW Nat'l Assn	10-02-76	
0128	Barnhart, Wilhelmina Ann	10-02-76	71-747
0128	Burton, Katherine Cullen	10-02-76	71-770
0128	Cullen, H.R	10-02-76	000001
0128	Cullen, Harry H	10-02-76	71-769
0128	Cullen, Roy H	10-02-76	71-768
0128	Geiselman, Eliz Robertson	10-02-76	71-722
0128	Houston National Bank	10-02-76	
0128	Long, Cornelia Cullen	10-02-76	71-767
0128	Long, Resources Inc	10-02-76	
0128	Marshall, Douglas B	10-02-76	71-771
0128	Marshall, Douglas B, Jr	10-02-76	71-618
0128	Marshall, Hugh Roy	10-02-76	71-779
0128	Marshall, Margaret Cullen	10-02-76	71-746
0128	Neuhaus, W. Oscar	10-02-76	
0128	Portanova, Enrico	10-02-76	71-776
0128	Portanova, Ugo	10-02-76	71-777
0128	Robertson, Alison S	10-02-76	71-761
0128	Robertson, Carroll C	10-02-76	71-774
0128	Robertson, Corbin J	10-02-76	71-775
0128	Robertson, Corbin J., Jr	10-02-76	71-762
0128	Robertson, Lillie T	10-02-76	71-773
0128	Robertson, Wilhelmina C	10-02-76	71-766

Contract No.	Seller	Contract date	Rate schedule
0128	Scott, Mary Hugh	10-02-76	71-751
0128	Southern Nat'l Bank of Houston	10-02-76	
0145	Phillips Pet Co	12-31-56	000799
0232	Mobil (MOEPSI)	04-27-60	000115
0232	Mobil (MEPNA)	04-27-60	000042
0238	Mobil (MEPNA)	07-07-60	000039
0272	Shell Oil Co	11-17-61	000N/A
0304	Phifer, Howard C	10-27-64	(73-497)
0304	Riley, Jim	10-27-64	73-497
0304	Wolsey Oil, Inc	10-27-64	81-119
0312	Amerada Hess Corp	10-25-65	000144
0312	Bayou Resources, Inc	10-25-65	85-109
0312	Bel Oil Corp	10-25-65	(71-833)
0312	Crow, David	10-25-65	(71-833)
0312	Grace Pet Corp	10-25-65	(71-833)
0312	WWF Oil Corp	10-25-65	71-833
0314	Pennzoil Co	03-22-82	000139
0355	Amerada Hess Corp	10-28-68	000150
0355	Bel Oil Corp	10-28-68	(71-833)
0355	Crow, David	10-28-68	(71-833)
0355	Grace Pet Corp	10-28-68	(71-833)
0355	WWF Oil Corp	10-28-68	73-833
0391	Bel Oil Corp	01-16-70	71-516
0391	Bintliff David C	01-16-70	71-422
0391	Hanover Pet Corp	01-16-70	(71-833)
0391	Hillin Oil Co	01-16-70	080-73
0391	Moore McCormack Engy, Inc	01-16-70	78-608
0391	Wheless Industries, Inc	01-16-70	71-305
0391	WWF Oil Corp	01-16-70	71-833
0435	Wheless N H Oil Co	04-23-82	71-597
0478	Canadianoxy OFSH Prod. Co	11-03-72	000003
0513	Curtis, James G	06-01-80	000N/A
0513	Hilty Interest, Inc	06-01-80	000N/A
0513	Hilty, R.E	06-01-80	000N/A
0513	Joyce, J.G	06-01-80	
0513	Joyce & Hilty, Inc	06-01-80	
0513	Joyce O&G, Inc	06-01-80	
0513	Kimbark O&G Co. 82-A Ltd	06-01-80	
0513	Mosbacher, Robert	06-01-80	71-707
0513	Poynor, J.T	06-01-80	
0513	Sulak, Daniel J	06-01-80	
0513	Templeton Engy, Inc	06-01-80	
0547	Goldston Oil Corp	06-01-74	082-39
0593	Anderson, Raymond C EST	09-26-84	(71-1029)
0593	Anderson, Thelman J	09-26-84	(71-1029)
0593	Andres, H Buddy	09-26-84	(71-1029)
0593	Benge, Chester B, Jr	09-26-84	
0593	Cutbirth, J Brown	09-26-84	(71-1029)
0593	Edwards, Peter R	09-26-84	
0593	Newman Brothers Drlg. Co	09-26-84	(71-1029)
0593	Reynolds, Rowena M. Trst	09-26-84	
0593	Riddle, J. I	09-26-84	(71-1029)
0593	Sinley, Maria E	09-26-84	
0593	Skinner Corp	09-26-84	(71-1029)
0593	Smith Cecilia Est	09-26-84	(71-1029)
0593	Smith, E.A., Jr	09-26-84	(71-1029)
0593	Smith, Phillip A. Jr. Trst	09-26-84	
0593	Smith, W.H	09-26-84	(71-1029)
0593	Stockard, W.A	09-26-84	(71-1029)
0593	Walsh, Shirley A. Trst	09-26-84	
0597	Arco Oil & Gas Co	04-04-75	000694
0724	Wainoco, O&G Co	11-30-77	73-135
0733	Benson, George E. Trst	05-02-84	000N/A
0733	Bevers, Harry L	05-02-84	000N/A
0733	Blake, John D	05-02-84	000N/A
0733	Hamm, R.L., Jr	05-02-84	000N/A
0733	Love Pet Co	05-02-84	78-610
0733	Petromark Res Co. et al	05-02-84	78-610
0740	Mustang Expl. Co., Inc	03-28-78	73-214
0763	Otto, Alfred P	07-27-78	082-17
0765	Houston Oil & Mnrls. Corp	04-02-78	000N/A
0766	Kerr-McGee Corp	01-30-85	000162
0776	Brady, Richard T	08-24-78	000N/A
0776	Brooner, Frank I., Jr	08-24-78	000N/A
0776	Cremer Oil Co	8-24-78	000N/A
0776	Douglass Frank	08-24-78	000N/A
0776	Engelke, Keith, S	08-24-78	000N/A
0776	Engelke, R.H	08-24-78	000N/A
0776	Frost, Adele	08-24-78	000N/A
0776	Grimes, Walter N	08-24-78	000N/A
0776	Jelliffe Oil Co	08-24-78	000N/A
0776	Sherer, Roland C., Jr	08-24-78	000N/A

Contract No.	Seller	Contract date	Rate schedule
0776	Stieren, Arthur T	08-24-78	000N/A
0779	Copeland, John L	08-01-78	78-738
0793	Brooner, Frank I., Jr	11-21-78	000N/A
0793	Cremer Oil Co	11-21-78	000N/A
0793	Driscoll, Joseph P	11-21-78	000N/A
0793	Engelke, R.H	11-21-78	000N/A
0793	Grimes, Walter N	11-21-78	000N/A
0793	Jelliffe Oil Co	11-21-78	000N/A
0793	Sherrer, Roland C., Jr	11-21-78	000N/A
0793	Stieren, Arthur T	11-21-78	000N/A
0793	Stieren, Barbara E	11-21-78	000N/A
0815	Bourne Oil Co	01-31-79	000N/A
0816	Goldston Oil Corp	01-02-79	000N/A
0966	Kallenberg, Sandra Phillips	12-04-79	000N/A
0966	Phillips, Fred Leonard	12-04-79	000N/A
0966	Reading & Bates Pet Co	12-04-79	000N/A
0966	Whitaker, Fred	12-04-79	000N/A
1023	Denovo Oil & Gas, Inc	06-25-80	
1035	GNC Ency. Corp	07-22-80	000N/A
1036	Shell Offshore, Inc	06-09-80	000062
1073	Devovo Oil & Gas, Inc	10-07-80	
1090	Harkins & Co	10-15-80	000N/A
1096	New England Engy., Inc	10-30-80	
1096	Samedan Oil Corp	10-30-80	000044
1100	Henco O&G Ltd	12-05-80	000N/A
1100	Sierra O&C Co	12-05-80	000N/A
1206	Dynamic Expl., Inc	08-14-81	000N/A
1206	Paragon Res., Inc	08-14-81	000N/A
1206	Struthers O&G Corp	08-14-81	000N/A
1294	Benatty Corp	02-25-82	000N/A
1357	Alexander, Clyde H. II	5-28-82	
1357	Alexander, Creston H	5-28-82	
1357	Alexander, Helen Mae	5-28-82	77-918
1357	Alexander, Margaret Y	5-28-82	
1357	Alliance Prod Co	5-28-82	
1357	Anderson Gertrude Feazel	5-28-82	
1357	Anderson, Henry F	05-28-82	(71-196)
1357	Anderson William G	5-28-82	(71-296)
1357	Briggs, Ben R	5-28-82	
1357	Briggs, Hugh M	5-28-82	
1357	Cambell, Nancy D	5-28-82	76+967
1357	Deminex U.S. Oil Co	5-28-82	
1357	Kinsey, Norman V	5-28-82	71-638
1357	Krutsinger, Sue D	5-28-82	76-952
1357	Mock, Judith A Trst	5-28-82	
1357	Norcad, Corp	5-28-82	
1357	North, Jane D	5-28-82	76-953
1357	Schroeder, Kay A Trst	5-28-82	
1357	Wall, Lallage B. Feazel	5-28-82	(71-296)
1357	Woodcock, Linda D	05-28-82	
1357	Wright, Jean A. Trst	05-28-82	
1357	Champlin	05-28-82	76-967
1357	Sun Explo. & Prod	05-28-82	
1363	Alexander, Leslie L	06-08-82	000N/A
1363	Alpine Cheese Factory, Inc	06-08-82	000N/A
1363	APP Devel Part 1981-A	06-08-82	000N/A
1363	APP Devel Part 1981-B	06-08-82	000N/A
1363	Energy Partners O&G 1980-2	06-08-82	000N/A
1363	Energy Partners O&G 1981-1	06-08-82	000N/A
1363	Energy Partners O&G 1981-2	06-08-82	000N/A
1363	Essex Offshore, Inc	06-08-82	000N/A
1363	Felmont Oil Corp	06-08-82	000N/A
1363	Harman, Reed	06-08-82	000N/A
1363	Logan, W.L. Trucking Co., Inc	06-08-82	000N/A
1363	Mcneil, Robert L., Jr	06-08-82	000N/A
1363	Needco O&G Comp Prog II-5	06-08-82	000N/A
1363	Needco O&G Comp. Prog. II-6	06-08-82	000N/A
1363	Needco O&G Comp. Prog. II-7	06-08-82	000N/A
1363	Needco O&G Comp. Prog. II-8	06-08-82	000N/A
1363	Needco O&G Comp, Prog. II-9	06-08-82	000N/A
1363	Needco O&G Comp. Prog. III-1	06-08-82	000N/A
1363	Needco O&G Comp. Prog. III-2	06-08-82	000N/A
1363	Needco O&G Comp. Prog. III-3	06-08-82	000N/A
1363	Needco O&G Comp. Prog. III-4	06-08-82	000N/A
1363	Needco O&G Comp. Prog. III-5	06-08-82	000N/A
1363	Needco O&G Comp. Prog. III-6	06-08-82	000N/A
1363	Oconee Associated	06-08-82	000N/A
1363	Patriot O&G Part	06-08-82	000N/A
1363	Patriot O&G Part 1981 1	06-08-82	000N/A
1363	Sandstone O&G Part 1981-1	06-08-82	000N/A
1363	Shandy O&G Part 1980	06-08-82	000N/A
1363	Shandy O&G Part 1981	06-08-82	000N/A

Contract No.	Seller	Contract date	Rate schedule
1363	Yankee Expl. Inc	06-08-82	000N/A
1363	Yankee Ohio O&G 1980-2	06-08-82	000N/A
1363	Yankee Ohio O&G 1980-3	06-08-82	000N/A
1363	Yankee Ohio O&G 1981-1	06-08-82	000N/A
1363	Yankee Ohio O&G 1981-2	06-08-82	000N/A
1363	Yankee Ohio O&G 1981-3	06-08-82	000N/A
1365	Brady, Richard T	05-07-82	000N/A
1365	Brooner, Frank I., Jr	05-07-82	000N/A
1365	Brown, Walter F	06-07-82	
1365	Cremer Oil Co	05-07-82	000N/A
1365	Douglass, Frank	05-07-82	000N/A
1365	Engelke, R.H	05-07-82	000N/A
1365	Grimes Walter N	05-07-82	000N/A
1365	Jelliffe Oil Co	05-07-82	000N/A
1365	Johnson C Neil, Jr	05-07-82	000N/A
1365	Koy, Billy C	05-07-82	000N/A
1365	Roy, Frank W	05-07-82	000N/A
1365	Lanfear, B.E., Jr	05-07-82	000N/A
1365	Sherrer, Roland C., Jr	05-07-82	000N/A
1365	Thomas, Betsy Co	05-07-82	000N/A
1369	PNB Petroleum Corp	06-21-82	
1377	Cumberland Oil Prod. Co., Inc	05-01-82	000N/A
1408	Bilbo-Angelle Prod. Co	08-13-82	000N/A
1408	Booth, James Trst	08-13-82	000N/A
1408	Burman O&G Co	08-13-82	000N/A
1408	Clements, Eugene J	08-13-82	000N/A
1408	Fairmont O&G Corp	08-13-82	000N/A
1408	Flew, B.L. Jr	08-13-82	000N/A
1408	O'Neil, John E., Jr	08-13-82	000N/A
1408	O'Neil, John E	08-13-82	
1408	Sicola, Charles	08-13-82	000N/A
1408	Urquhart Hastings, Inc	08-13-82	000N/A
1408	Wiggins, William W., Jr	08-13-82	000N/A
1418	Case-Pomeroy Oil Corp	07-29-82	000023
1486	Conoco, Inc	11-01-77	000154
1486	Sonat Expl	11-01-77	000154
1524	Louisiana Land & Expl. Co	05-11-84	000N/A

Contract No.	Producer	Contract date	R/S
Tennessee Protests the claims for delivery allowances of the following:			
0016	Cheveron	02-17-83	0000211
0052	F. William Carr	08-17-84	N/A
0255	Shell	06-01-80	000009
0259	Sun	04-30-82	000133
0263	Cities Service	08-27-82	000187
0264	Conoco	03-11-83	000201
0318	Texaco	09-01-81	000373
0654	Cities Service	06-02-76	000436
0659	Arco	06-17-76	000706
0660	Conoco	06-17-76	000430
0667	Arco	08-10-76	000707
0671	Conoco	09-16-76	000431
0688	Cities Service	04-01-77	000448
0699	Conoco	06-24-77	000440
0845	Partners	04-02-79	N/A
0855	Mesa	04-26-79	000109
0871	Chevron	06-01-79	N/A
0918	Santa Fe	08-31-79	N/A
0926	Phillips	08-31-79	N/A
0929	Jeems Bayou	07-05-79	N/A
0953	CNG	11-07-79	000049
0977	Denison Mines U.S	11-07-79	080-49
1016	Conoco	06-03-80	000467
1032	Canadian Oxy	07-21-80	000008
1043	Arco	07-31-80	000755
1064	Arco	09-30-80	N/A
1254	Nathan McRae	01-01-81	000001
1465	Tenneco	12-06-82	N/A
1527	Mobil	05-22-84	N/A
On October 21, 1987, Tennessee supplemented its list of contracts in which it disputes the seller claims as follows:			
0016	Broken Hill Proprietry	02-17-83	N/A
0016	Chevron	02-17-83	211

Contract No.	Producer	Contract date	R/S
0016	Petroleum Corp. of Dela.	02-17-83	N/A
0016	Prior Expl	02-17-83	N/A
0052	B.B. Baxter	08-17-84	N/A
0052	E.B. Carr Trust	08-17-84	N/A
0052	F.W. Carr	08-17-84	N/A
0052	F.W. Carr, Jr	08-17-84	N/A
0052	F.R. Carr Trust	08-17-84	N/A
0052	J. Chrysler Trust	08-17-84	N/A
0052	H.C. Green Truste	08-17-84	N/A
0255	Shell	06-01-80	9
0259	Sun	04-30-82	133
0263	Cities Service	08-27-82	187
0264	Conoco	03-11-83	201
0265	Arco	03-24-83	235
0318	Texaco	09-01-81	373
0654	Cities Service	06-02-76	436
0655	Texaco	06-07-76	220
0659	Arco	06-17-76	706
0660	Conoco	06-17-76	430
0667	Arco	08-10-76	707
0671	Conoco	09-16-76	431
0688	Cities Service	04-01-77	448
0699	Conoco	06-24-77	440
0845	Partners	04-02-79	N/A
0855	Mesa	04-26-79	109
0871	F.D. Bergstein	06-01-79	N/A
0871	Brock Exploration	06-01-79	N/A
0871	Brock Expl. 1979-1 Ltd.	06-01-79	N/A
0871	Chaparral Engy Dev't	06-01-79	N/A
0871	Chevron	06-01-79	N/A
0871	G.W. Gowan	06-01-79	N/A
0871	Harbor Oil	06-01-79	N/A
0871	Kennedy & Mitchell	06-01-79	N/A
0871	Laredo Explor	06-01-79	N/A
0871	Newman Operating	06-01-79	N/A
0871	D.M. Olsen Trust	06-01-79	N/A

Contract No.	Producer	Contract date	R/S
0871	Rainy River-Nugget '78-1.	06-01-79	N/A
0871	Rainy River-Nugget '78-2.	06-01-79	N/A
0871	A.J. Schottenstein	06-01-79	N/A
0871	M.W. Strong	06-01-79	N/A
0871	Texas Drilling	06-01-79	N/A
0871	L.A. Williams	06-01-79	N/A
0871	B.L. Woolley, Jr	06-01-79	N/A
0918	Santa Fe	08-31-79	N/A
0926	Phillips	08-31-79	N/A
0929	Jeems Bayou	07-05-79	N/A
0953	CNG	11-07-79	49
0967	Convest Energy	12-18-79	N/A
0967	Reading & Bates	12-18-79	N/A
0977	Denison Minies U.S	11-07-79	080-49
1016	Conoco	06-03-80	467
1017	Texaco	06-03-80	446
1032	Canadian Oxy	07-21-80	8
1043	Arco	07-31-80	755
1064	Arco	09-30-80	N/A
1254	Nathan McRae	01-01-81	1
1465	Tenneco	12-06-82	N/A
1494	Conoco	09-06-83	490
1527	Mobil	05-22-84	N/A

Texas Eastern Transmission Corporation (Texas Eastern)

Texas Eastern submitted the following list of first sellers with contractual authority to collect NGPA section 110 production-related costs:

Contract number	First seller	Contract date	Rate schedule
4829	Adobe Oil & Gas Corporation.	02-13-80	
2698	Amerada Hess Corporation.	01-28-74	163
3106	....do	09-01-76	165
4780	....do	12-12-79	185
4991	....do	07-07-80	189
5774	....do	06-05-81	191
6270	....do	04-01-82	193
6271	....do	04-09-82	194
5503	American Energy Svs, Inc.	10-17-80	
2999	Amoco Production Company.	06-01-76	150
2063	....do	05-01-69	541
2246	....do	06-17-71	8
3069	....do	10-27-75	720
3284	....do	01-17-78	766
3285	....do	01-17-78	765
3286	....do	01-17-78	764
3287	....do	01-17-78	763
3371	....do	04-24-78	636
4628	....do	08-17-79	
4629	....do	08-17-79	
4694	....do	09-28-79	
4735	....do	11-09-79	
4813	....do	01-18-80	
4837	....do	03-05-80	
4887	....do	04-17-80	
4888	....do	04-17-80	
5191	....do	02-12-57	203
5316	....do	01-01-75	87
5418	....do	06-01-80	
5519	....do	11-06-80	
5768	....do	05-11-81	
5962	....do	04-01-81	720
6049	....do	11-01-81	
6050	....do	11-02-81	
6431	....do	08-02-81	150
6488	....do	04-01-82	
4703	Ashtola Production Company.	10-18-79	
4704	....do	10-18-79	
4757	....do	11-28-79	
4814	....do	01-08-80	
6051	....do	12-09-81	
6602	....do	12-20-82	
6135	APC Operating Partnership.	02-01-82	
2958	Arco Oil and Gas Company.	02-26-76	544
1450	....do	07-01-61	459
1870	....do	04-07-67	606
3105	....do	03-02-77	788
4073	....do	03-20-78	554
4797	....do	01-10-80	360
4812	....do	01-07-79	359
5006	....do	03-25-52	34
5333	....do	09-10-76	160
5341	....do	01-01-77	161
5366	....do	01-17-79	36
5370	....do	04-03-79	
5402	....do	09-11-79	365
5404	....do	10-16-79	244
5966	....do	10-01-81	789
6256	....do	05-13-82	
4499	B. J. Glerhart, Inc.	05-01-79	
6264	Benatty Corporation.	05-26-82	
6585	....do	11-15-82	
3205	Bennet, Mills Estate.	07-05-77	
5409	....do	12-04-79	
5410	....do	12-04-79	
5411	....do	12-04-79	
6556	....do	10-01-82	
5339	Barry, Philip B.	01-05-77	
0040	BHP Petroleum Co., Inc.	04-15-47	2
2602	....do	09-01-73	1
5796	....do	08-01-80	122
2912	Browing & Welch, Inc.	08-20-75	
5541	....do	11-25-80	
1128	Burk Royalty Company.	02-04-59	
2916	Cabot Petroleum Corp.	09-01-75	61
5398	Carr, F. William.	06-06-78	
6102	Carter Exploration Co.	12-15-81	
2925	Case-Pomeroy Oil Corp.	09-01-75	6
4329	....do	03-20-79	11
2863	Ceja Corporation.	04-07-75	
0519	Champlin Petroleum Co.	06-15-53	2
0848	....do	09-14-56	27
7107	....do	05-01-83	2
1802	Chevron U.S.A. Inc.	06-08-67	42
2054	....do	02-15-69	47
2183	....do	11-25-70	64
2228	....do	05-19-71	486 (425)
2482	....do	07-01-72	54
3238	....do	06-03-77	56
5340	....do	06-16-77	215 (42)
5399	....do	10-04-79	264 (108)
5576	....do	01-14-79	215 (42)
5931	....do	08-19-81	664 (623)
6182	....do	03-19-82	
4334	Cities Offshore Production Co.	03-21-79	6 (484)
0461	Cities Svs. Oil & Gas Corp.	04-27-53	355
1909	....do	09-01-67	220
2070	....do	06-16-69	314
2149	....do	08-27-70	330
4071	....do	09-25-78	373
4493	....do	05-07-79	661
4562	....do	06-25-79	669
4777	....do	12-18-79	683
5419	....do	06-23-80	696
5475	....do	09-19-80	
5570	....do	01-09-81	731
5683	....do	07-01-81	377
5719	....do	05-03-81	368
6332	....do	06-08-82	502
6563	....do	09-06-82	370
6352	Clemco	07-15-82	
6454	CNG Producing Company.	09-27-82	60
6495	Cobra Oil & Gas Corp.	09-15-82	
3105	Conoco Inc	03-02-77	483
4652	....do	09-07-79	461
5341	....do	01-01-77	139
5517	....do	11-06-80	473
5966	....do	10-01-81	483
6426	....do	09-09-82	139
0848	Cox, Edwin L & Berry R.	09-14-56	
6554	Crown Zellerbach Corp.	09-01-82	
6345	D.J.F. Petroleum Corp.	06-01-82	
6192	DeNovo Oil & Gas, Inc.	03-18-82	
6428	Diamond Shamrock Exploration Company.	08-20-82	74
5452	....do	08-15-80	
5940	Dirks Petroleum Corp.	08-15-81	
6009	DOC-NCC Svs. Company.	09-15-81	
5383	Douglas Petroleum, Inc.	05-25-79	
5471	....do	09-12-80	
4719	Dynamic Production, Inc.	10-26-79	
6591	Eastern States Exploration Co.	11-15-82	
5619	Edwin M. Jones Oil Co.	12-05-80	
2966	Elf Aquitaine Petroleum.	02-13-76	
6342	Energy Develop-ment Corp.	03-01-82	
6487	....do	09-30-82	
6108	Energy Production, Incorp.	12-31-81	
1805	Energy Reserves Group, Inc.	02-25-66	
1885	Enserch Exploration, Inc.	07-14-67	84
2063	....do	05-01-69	90
2814	....do	10-27-74	87
5511	....do	10-01-80	
6391	Enterprise Energy Corp.	08-10-82	
0461	Exxon Company, U.S.A.	04-27-53	19
1823	....do	05-05-66	401
1890	....do	07-12-67	433
2220	....do	04-26-71	490
2335	....do	02-17-72	505
4680	....do	10-01-79	15
5521	....do	11-10-80	10
5749	....do	06-01-81	12
2786	Enstar Corporation.	08-15-74	34 (SPC)
3294	....do	12-01-77	6
4524	Feliciana Corporation.	05-24-79	
2924	....do	09-01-75	23
4328	....do	03-16-79	33
0739	Fina Oil & Chemical Co.	12-01-55	33
0744	....do	11-28-55	7
5242	....do	02-05-63	40
5573	....do	01-19-81	63
5837	....do	07-21-81	88
3325	Finley Company.	07-20-77	

Contract number	First seller	Contract date	Rate schedule
2786	Florida Exploration Co.	08-15-74	33
6394	do	08-11-82	
5929	FMP Operating Co, a Limited Partnership.	08-17-81	21 (2)
6184	do	03-15-82	19 (3)
6397	do	08-24-82	14 (13)
6255	Franks Petroleum, Inc.	02-15-82	
5619	Frost National Bank D/B/A Peet Oil Co.	12-05-80	
5451	Geodynamics Oil & Gas Inc	08-25-80	
2430	George R. Brown Partnership.	07-19-72	6 (6)
4153	do	10-20-78	1
5999	Goldston Oil Corporation.	10-01-81	
5962	Grigsby, Jack W.	04-01-81	
5578	Guernsey Petroleum Corp.	01-09-81	
6420	H & J Exploration Co., Inc.	08-15-82	
4812	Hanson Minerals Company.	01-07-79	
5353	do	08-18-78	
6243	do	04-01-82	
6337	do	07-14-82	
1775	Hassie Hunt Exploration Co.	09-15-65	39
2019	do	01-08-69	37
3240	do	09-20-77	4
5731	Hawk Petroleum, Inc.	03-29-81	28
6175	Hawkins, H. L., Jr.	03-18-81	
3258	Highland Resources, Inc.	11-21-77	19
4877	Hilliard Oil & Gas, Inc.	03-31-80	
5497	do	09-26-80	
6584	do	11-01-82	
5574	Hopkins, T. M..	01-13-81	
5993	do	07-18-80	
4289	Houston Oil & Minerals Corp.	03-01-79	
6383	do	07-29-82	20
2958	Hunt Oil Company.	02-26-76	28
3121	do	01-24-77	32
2804	Hunt Petroleum Corp.	10-14-74	13 (1)
5962	do	04-01-81	(36)
2804	Hunt, Lamar Trust Estate.	10-14-74	8
2804	Hunt, Nelson Bunker Trust Estate.	10-14-74	7
2804	Hunt, William Herbert Trust Estate.	10-14-74	10
5361	do	12-01-78	2
4614	HNG Oil Company.	06-20-79	4
6322	Inca Oil Corporation.	06-01-82	
1870	J.M. Huber Corporation.	04-07-67	77
5962	Jones-O'Brien, Inc.	04-01-81	
4594	Kamlok, Inc	07-05-79	
1871	Kerr-McGee Corporation.	04-04-67	93
2919	do	09-01-75	133
4886	do	02-01-80	172
5820	do	06-18-81	157
6159	do	02-17-82	97
6327	do	06-30-82	186
5472	Killingsworth S.H. Estate.	09-15-80	
6456	Koch Industries, Inc.	09-28-82	21
6039	LaParrita Oil & Gas Inc.	12-08-81	
2866	LLOXY Holdings, Inc.	04-18-75	2
3201	do	07-18-77	4
3202	do	08-02-77	3
4674	do	09-20-79	10
5542	do	12-01-80	13
3941	Loflin, John N..	01-24-78	
3239	Logue & Patterson, Inc.	09-16-77	(8)
2143	Louisiana Land & Exploration Company.	07-31-70	6
2692	do	01-28-74	16
3124	do	04-12-77	20
3529	do	06-21-78	28
3964	do	08-09-78	
4521	do	05-30-79	35
5840	do	07-21-81	39
6013	do	10-15-81	
6014	do	10-15-81	
6265	do	05-24-82	40
6396	do	08-24-82	41
1801	Lyons Petroleum, Inc.	11-01-65	
6382	LOFCO	08-01-82	
4561	M.F. McCain, Inc.	06-01-79	
5498	Magnolia Oil Corporation.	10-14-80	
3513	Maguire Oil Company.	06-01-76	
2693	Marathon Oil Company.	01-28-74	128
2868	do	04-21-75	132
3104	do	09-01-76	139
3191	do	06-21-77	143
3965	do	07-18-78	156
4082	do	08-30-78	166
4256	do	01-17-79	165
4854	do	03-25-80	173
5358	do	08-17-78	142
5880	do	07-02-81	177
6193	do	02-23-82	178
6415	do	02-25-81	69
0040	Marr, M.H.	04-15-48	
6028	Marshall Exploration, Inc.	11-17-82	
6398	do	07-01-82	
6457	McCauley, F.R.	07-18-82	
6538	McCormick Oil & Gas Partnership.	10-01-82	
2973	Mesa Operating Limited Partnership.	03-01-76	(76)
6466	Mesa Operating Limited Partnership.	09-17-82	(152)
4524	Mitchell Energy Corp.	05-24-79	9
5267	do	05-15-68	35
5385	do	04-28-79	10
6491	Mobil Exporation & Producing North America.	10-14-82	124 (280)
2055	Mobil Oil Corporation.	02-28-69	454
2336	do	02-18-72	486
0040	Mobile Oil Exploration & Producing Southeast Inc..	04-15-48	10 (82)
1896	do	08-07-67	39 (407)
2069	do	06-06-69	48 (456)
2148	do	08-17-70	51 (467)
2843	do	02-25-75	73 (527)
2846	do	02-25-75	74 (528)
2848	do	02-25-75	72 (526)
3147	do	05-17-77	77 (543)
4005	do	08-31-78	86 (536)
4571	do	06-29-79	42 (418)
0848	Mobile Producing Texas & New Mexico Inc.	09-14-56	95 (387)
2642	do	09-01-73	102 (414)
5532	do	09-06-79	8 (19)
6269	Moore McCormack Energy, Inc.	12-21-81	
4339	Mosbacher, Robert.	10-13-78	
5277	do	10-05-73	
5555	do	12-16-80	
0040	Murphy Oil USA, Inc.	04-15-48	
4500	do	04-30-79	13
6248	do	03-11-82	14
5263	MPS Production Co.	11-11-66	
3105	Newmont Oil Co.	03-02-77	
5966	do	10-01-81	
5626	Nicklos Oil & Gas Co.	05-01-80	
5881	do	03-21-81	
6227	do	04-14-82	
5415	Northern Pump Co.	03-04-80	
6394	NT Corp	08-11-82	2
5460	Outline Oil Corp.	08-01-80	
5921	Owl Petroleum Co.	08-13-81	
1725	Oxy Petroleum, Inc.	11-20-64	526
6392	OKC Limited Partnership.	07-15-82	
5372	Pelto Oil Co	03-05-79	
5600	do	02-02-81	
2589	Pennzoil Co	07-01-73	97 (251)

Contract number	First seller	Contract date	Rate schedule
5407	....do	11-28-79	69 (202)
5550	....do	12-10-80	123 (300)
5616	....do	01-30-81	
4675	Petrojet, Inc	09-26-79	
5672	....do	01-01-81	
5396	Phillips Oil Co	08-14-79	3 (18)
2700	Phillips Petroleum Co.	01-28-74	762 (104)
3088	....do	01-25-77	766 (108)
4060	....do	09-18-78	768 (110)
4090	....do	09-12-78	769 (111)
5547	....do	12-16-80	370
5733	....do	05-14-81	
5734	....do	05-14-81	778 (120)
5853	....do	05-14-81	779 (121)
6272	....do	05-28-82	697 (90)
6281	....do	03-01-82	
6564	....do	10-01-82	
6395	Pioneer Production Corp.	07-28-82	71
6560	Pressure Transport	04-15-82	
4561	Pride Exploration, Inc.	06-01-79	
6336	Pruet Oil Co	05-15-82	
5945	R. Lacy Inc	08-31-81	
5385	Rauch, Gerald.	04-28-79	
5928	Rea Oil & Gas, Inc.	08-17-81	
4828	Riddle Oil Co	02-12-80	
3063	Ross & Glenn Petroleum Inc.	06-01-76	
5687	Sabine Corp	03-23-81	
6203	....do	12-15-81	
4944	Samedan Oil Corp.	06-17-80	41
4615	Sevarg Company, Inc.	08-15-79	
4642	....do	08-29-79	
5621	....do	02-11-81	
1998	Shell Offshore, Inc.	08-27-68	18 (369)
2099	....do	10-06-69	21 (379)
1443	Shell Western E&P Inc.	07-01-61	68 (257)
5335	....do	01-01-77	133 (400)
5921	....do	08-13-81	1 (10)
5961	Sklar & Phillips Oil Co.	08-01-81	
4223	Smith, Harry L.	12-18-78	
5647	Sohio Petroleum Co.	03-02-81	
4995	Strata Corp	07-31-80	
6277	....do	06-14-82	
6562	....do	09-01-82	
0040	Sun Exploration & Prod. Co.	04-15-48	35
1628	....do	09-24-64	474
1635	....do	06-25-63	162
1636	....do	06-25-63	161
1690	....do	03-30-64	424
2958	....do	02-26-76	328
3224	....do	06-03-77	206
3952	....do	10-17-77	91
4198	....do	05-08-78	583
4695	....do	10-03-79	617
4742	....do	04-24-79	23
4889	....do	04-21-80	
4959	....do	07-02-80	
5239	....do	07-25-62	405
5341	....do	01-01-77	47
5384	....do	02-07-79	282
5731	....do	03-29-81	28
6027	....do	10-09-81	747
6249	....do	04-15-82	330
6455	....do	09-27-82	753
6258	Sutton, H.E	04-01-82	
5818	Tenneco Oil Co.	03-31-81	101
5819	....do	03-31-81	113
6385	....do	08-15-82	439
6523	....do	07-16-82	112
0875	Texaco Inc	12-21-56	160
2396	....do	06-22-72	479
3241	....do	10-17-77	170
5403	....do	01-05-79	97
5417	....do	05-12-80	416
5546	....do	11-18-80	272
5946	....do	08-01-81	
6317	....do	04-15-82	
6357	....do	06-15-82	
6390	....do	08-09-82	
1910	Texaco Producing Inc.	09-01-67	362 (362)
2071	....do	06-16-69	372 (372)
2100	....do	09-08-69	
2150	....do	06-28-70	374 (374)
2975	....do	11-19-75	490 (490)
3105	....do	03-02-77	539 (539)
4318	....do	11-01-78	228 (228)
5386	....do	06-20-79	7 (7)
5414	....do	03-25-80	284 (284)
5504	....do	10-16-80	51 (51)
5646	....do	03-02-81	
5670	....do	03-24-81	
5719	....do	05-03-81	
5723	....do	04-30-81	272 (272)
5724	....do	04-30-81	490 (490)
5736	....do	10-28-80	461 (461)
5745	....do	05-20-81	451 (451)
5839	....do	07-17-81	520 (520)
5849	....do	07-17-81	
5966	....do	10-01-81	540 (540)
6014	....do	10-15-81	
6260	....do	05-18-82	529 (529)
6333	....do	07-02-82	532 (532)
6403	....do	08-06-82	534 (534)
3254	....do	07-15-77	550 (274)
2610	Texas Eastern Eploration Co.	08-24-73	8
2611	....do	08-24-73	9
2612	....do	08-24-73	6
2613	....do	08-24-73	7
2867	....do	04-22-75	12
3144	....do	05-31-77	13
3161	....do	06-15-77	15
3183	....do	07-12-77	18
3184	....do	07-13-77	17
3198	....do	08-08-77	16
3963	....do	08-10-78	19
4263	....do	01-31-79	20
4612	....do	08-06-79	22
5514	....do	10-30-80	23
5772	....do	06-01-81	28
5592	Texas International Petroleum Co.	12-18-80	
5904	Texlan Oil Co., Inc.	08-01-81	
6564	....do	10-01-82	
6202	Turke, Kehle & Associates.	02-10-82	
2100	TXO Production Corp.	09-08-69	
3508	....do	05-08-78	
3982	....do	08-14-78	
4269	....do	11-01-78	
4892	....do	04-22-80	
5347	....do	07-25-78	
5365	....do	02-01-79	
536815	....do	02-15-79	
5865	....do	06-01-81	
5972	....do	08-01-81	
6347	....do	04-15-82	
6393	TXO Operating Co.	07-29-82	35 (63)
1907	Union Expl. Ptnrs., Ltd.	08-24-67	903
2007	....do	10-07-68	904
2008	....do	10-07-68	201
2829	....do	01-06-75	220
2830	....do	01-06-75	218
2831	....do	01-06-75	221
2832	....do	01-06-75	219
3133	....do	05-09-77	242
3134	....do	05-09-77	235
3968	....do	08-14-8	247
4591	....do	07-13-79	252
5537	....do	12-01-80	265
5660	....do	03-23-81	268
4093	Union Texas Petroleum Corp.	09-05-78	148
5392	....do	07-31-79	14
5393	....do	07-31-79	16
5395	....do	07-31-79	20
6384	....do	08-16-82	153
6544	....do	11-16-82	
4775	W.C. McBride-Silurian Oil Co.	12-07-79	
5752	Warrior Management Co.	05-21-81	
6251	Wolford C.J.	12-01-81	
6268	....do	06-01-82	

Texas Eastern submits that the following first seller is without contractual authority to collect production-related costs:

6958	Marathon Oil Company.	12-21-83	180

TEXAS GAS TRANSMISSION CORPORATION (TEXAS GAS)

Contract No.	Producer	Rate schedule	Contract date

Texas Gas submitted the following list of first sellers with contract authority to collect delivery allowances:

020	Amerada Hess Corp	9
023	....do	84
035	American Petrofina Co.	85
035	C.N.G. Producing	5
040	SoOhio	14
040	Amerada Hess Corp	13
043	Gulf Oil Co	355
058	Amoco	826
062	....do	779
063	....do	78
064	....do	800
065	....do	815
066	....do	816
069	ARCO	257
071	ARCO	222
074	ARCO	55
079	ARCO	155
082	Chevron USA	14
090	Union Oil of CA	35
105	The Superior Oil Co	281
117	Gulf Oil Co	352

TEXAS GAS TRANSMISSION CORPORATION (TEXAS GAS)—Continued

Contract No.	Producer	Rate schedule	Contract date
117	Marsh Engineering Inc.	SP	04-26-83
120	Chevron U.S.A	5	
122	Partners Oil Co	SP	06-12-61
126	Chevron USA	24	
128	Chevron U.S.A	6	
128	Partners Oil Co	SP	09-20-77
131	Chevron U.S.A	41	
132	Sun Explor. & Prod. Co.	537	
132	Chevron U.S.A	40	
132	Exchange Oil & Gas	24	
132	Pelto Oil Co	SP	06-01-67
132	Sun Explor. & Prod. Co.	537	
138	Braun, Belco & Cox	SP	03-13-68
138	Superior Oil Co	136	
138	Amoco Production Co.	662	
144	Conoco, Inc	224	
145	A.C. Glassell, Jr	SP	02-28-77
154	Conoco, Inc	174	
155	Gulf Oil	84	
156	do	233	
158	do	411	
159	do	426	
164	Chevron USA	68	
171	Sun Exploration	536	
171	Exchange Oil & Gas	23	
171	Sun Exploration	536	
173	Cities Service	418	
184	Partners Oil Co	SP	09-13-76
185	Exchange Oil & Gas	35	
188	Gulf Oil	338	
189	Partners Oil Co	SP	07-14-78
208	Gulf Oil Explor. & Prod.		05-13-80
211	Hassie Hunt	20	
217	Dynamic Exploration		11-05-81
233	C.N.G. Producing	4	
235	Norwegian Oil Corp	SP	09-28-65
235	ARCO Oil & Gas Co	560	
235	C.N.G. Producing	7	
235	Exchange Oil & Gas	3	
235	North Central Oil Corp.	7	
237	C.N.G. Producing Co	10	
242	do	56	
246	Chevron USA	25	
254	Houston O&G/ Tenneco.		09-01-77
259	Exxon	143	
261	do	127	
264	Kerr-McGee	74	
328	American Petrofina Co.	86	
329	do	84	
329	Partners Oil Co	SP	09-15-77
342	Gulf	594	
364	Phillips Petroleum Co	693	
366	Amoco	523	
368	do	536	
369	do	540	
384	Pelto Oil Co	SP	03-30-81
387	Texaco (formerly 483).	343	
388	Phillips Petroleum Co	355	
403	Union Oil Co. of CA	35	
406	Samedan Oil Corp		06-26-79
410	Shell	153	
411	do		10-08-79
414	Caroline Hunt Schoellkopf.	5	
416	ARCO Oil & Gas Co	438	
419	Getty Oil Co./Texaco	370	
421	Texaco Producing Inc	115	

TEXAS GAS TRANSMISSION CORPORATION (TEXAS GAS)—Continued

Contract No.	Producer	Rate schedule	Contract date
423	T.G.E.C	63	
424	T.G.E.C	62	
425	T.G.E.C	66	
431	McMoran/FMP	SP	07-01-60
439	Stone Petroleum	SP	09-22-81
439	Phillips Petroleum Co		09-22-81
446	T.G.E.C	58	
447	Texaco Inc	589	
448	T.G.E.C	56	
449	T.G.E.C	55	
452	Texaco Inc	582	
453	do	583	
454	T.G.E.C	54	
455	T.G.E.C	53	
457	T.G.E.C	48	
459	Sun Exploration & Rosewood.	730	
461	T.G.E.C	42	
462	T.G.E.C	41	
463	T.G.E.C	43	
464	T.G.E.C	44	
465	T.G.E.C	45	
467	T.G.E.C	46	
468	T.G.E.C	47	
469	Superior	69	
472	Texaco Inc	519	
475	Sun Exploration	434	
476	Texaco Inc	478	
477	Texaco	445	
478	Texaco Inc	447	
479	do	209	
480	Superior	13	
481	Texaco Inc	376	
482	Texaco	361	
484	do	362	
486	do	322	
486	do	343	
487	do	233	
495	T.G.E.C	27	
498	T.G.E.C	29	
501	T.G.E.C	34	
502	T.G.E.C	33	
508	Getty/Texaco	91	
510	do	37	
521	Union Oil of CA	60	
522	Union Oil Co. of CA	59	
524	do	167	
525	do	166	
526	do	200/905	
527	do	250	
528	do	204	
531	do	208	
535	Union/Eugene Shoal	237/855	
536	Union Oil Co. of CA	245	
537	do	250	
538	Eugene Shoal Oil Co	25	
542	Union Oil Co. of CA		09-17-80
543	T.G.E.C		09-17-80
544	T.G.E.C	61	
549	Union Texas	63	
557	Exchange Oil & Gas	30	
575	Devon Energy	SP	08-10-60
582	Ergon Exploration Inc.	SP	08-10-60
586	Devon Energy	SP	08-10-60
587	Ergon Exploration Inc.	SP	01-28-77
588	do	SP	03-21-79
601	Hassie Hunt	25	
603	Phillips Petroleum Co	459	
608	Texaco	311	
611	Devon Energy	SP	06-30-58
619	Gulf Oil	455	
622	do	311	
659	Reliance	SP	02-07-79
664	Murphy Oil USA	16	
670	Placid Oil	8	

TEXAS GAS TRANSMISSION CORPORATION (TEXAS GAS)—Continued

Contract No.	Producer	Rate schedule	Contract date
680	T.G.E.C	1	
682	T.G.E.C	8	
701	Cities Service	-	07-11-79
702	do	-	11-01-79
703	Champlin Pet. & All Others.	-	05-18-81
712	A.C. Glassell, Jr	SP	06-21-74
720	Getty/Texaco	236	
741	Samson Resources Co.	SP	01-08-76
750	Getty/Texaco	237	
750	do	234	
751	do	292	
760	Union Oil Co. of CA	90	
760	Cities Service Oil & Gas.	231	
760	Getty/Texaco	235	
760	Sun Exploration	310	
760	Amoco	22	
761	Phillips Petroleum	23	
762	Kerr-McGee	3	
764	Hunt Oil	1	
768	Sun Explor. Prod. Co., *et al.*	-	08-02-83
780	Sun Exploration	105	
780	ARCO	386	
780	Conoco, Inc	81	
780	Getty/Texaco	238	
780	Amoco	25	
781	Amoco Production Co.		02-18-80
800	ARCO	188	
801	Mobil Oil	44	
807	ARCO	227	
812	Marathon Oil Co	60	
813	Kerr-McGee	98	
814	Getty/Texaco	201	
819	Hunt Oil	53	
823	MOEPSI	23	
824	MOEPSI	27	
825	Amoco	202	
826	Amoco/Eubanks	243	
827	Amoco	235	
830	ARCO	393	
831	ARCO	436	
832	Union Oil Co. of CA	133	
834	do	134	
842	Getty Oil/Texaco	109	
846	Devon Energy	SP	09-21-84
849	Hunt Oil	56	
851	Amoco	247	
856	Roppio	SP	04-10-62
856	Amoco	520	
857	Roppolo	SP	06-11-68
857	Amoco	515	
863	Marathon Oil Co	114	
864	Amoco	569	
869	MOEPSI	24	
870	Amoco	252	
879	Placid, Rosewood, & LA-Hunt.	67	
886	Amoco	516	
893	do	840	
910	do	716	
910	do	716	
929	do	430	
977	Harold Brinkley		10-28-81
978	do		12-10-82
2002	T.G.E.C	67	
2024	Kerr-McGee	96	

Trunkline Gas Company (Trunkline)

Trunkline submitted the following schedule of contracts receiving delivery

allowance based on an area rate clause authorization:

Producer name	Contract number	Field or location
Agoil, Inc. (MSE Operation Corp.).	385	LaBahia.
American Petrofina (Fina Oil Chem. Co.).	485 (48c)	Hidalgo.
Aminoil, U.S.A., Inc. (Phillips Pet. Co.).	317	E. Cameron 322/323.
Do	514	S. Pelto 12.
Amoco Production Co.	40A	Heard R.
Do	99	So. Kaplan.
Do	545 (99)	So. Kaplan.
Do	184	S. Timb. 176/161.
Do	216R	N. Bird Is.
Do	356	SS 299/292.
Do	413	S. Timb. 156.
Do	518	Vermillion 14.
Anadarko Production Co. (Anadarko Pet. Corp.).	271	Vermillion 320.
Do	272	E. Cameron 338.
Do	346	EI 380A.
Do	369	HIA 369/370.
Do	379	HIA 327/332.
Do	391	HIA 511.
Do	402	HIA 317.
Do	426	E. Cameron 353.
Do	454	E. Cameron 104.
Do	462	EI 380B.
Do	473	E. Cameron 359.
Do	541	Brazos A-47.
Arco Oil & Gas Co.	16	Columbus.
Do	27	Columbus.
Do	110x2 (557)	Esther.
Do	193	VM120.
Do	294	SMI261.
Do	310	SMI261.
Do	546 (119X2)	Riceville/Mermentau.
Do	557	Esther.
Do	47R (334)	San Carlos/E. Edinburg.
Bass Partnership (Bass Enterprises).	507 (116)	Riceville.
Canadian Occidental (Canadian Oxy Offshore).	443	HI A312
Chevron U.S.A., Inc.	500 (119)	Riceville.
Do	182	ST 51/52, SS266/267, SP 16/23.
Do	206	ST 188.
Do	290	SMI 269.
Do	319	WC 532/533.
Chevron U.S.A. Inc.	336	WC 534.
Cities Service Oil & Gas Corp/Oxy Pet., Inc.	556(13)	Ramsey Columbus.
Cities Service Oil & Gas Corp/Oxy Pet., Inc. (Canadian Oxy Offshore).	226	ST 148.
Cities Service Oil & Gas Corp/Oxy Pet., Inc.	297	SMI261.
Cities Service & Gas Corp (Oxy Pet., Inc.).	308	SMI 261.
Cities Services & Gas Corp (Oxy Pet., Inc.).	436	ST 86.
Do	442	HIA 312.
Cities Services & Gas Corp. (Oxy Pet., Inc.).	534	SP 18.
Do	553	SP 12.
Cities Services & Gas Corp. (Oxy Pet., Inc.) (Canadian Oxy Offshore).	194	VM 120.
Cities Service & Gas Corp. (Oxy Pet., Inc.).	422	Choc. Bayon.
Conoc, Inc.	164	Kelsey.
Do	192	VM 120.
Do	225	ST 148.
Do	296	SMI 261.
Do	311	SMI 261.
Do	324	Hidalgo.
Do	504 (324)	Hidalgo.
Decalta Internat'l	439	HI 312.
Denison Mines (US).	496	WC 624.
Diamond Shamrock Corp. (D.S. Off. Partners Ltd.).	268	VM 320 "A".
Do	269	E. Cameron 338.
Do	345	EI 380 "A".
Do	370	HIA 369/370.
Do	383	HIA 327/332.
Do	398	HIA 511.
Do	425	E. Cameron 353.
Do	463	EL 380 "B".
Do	520	HIA 542.
Do	554	HIA 365.
Don H. Ford (Laurel).	382	Bonus North.
Edwin L. Cox	235	Christmas.
Elf Aquitaine	553	HIA 365/376.
Do	275	VM 320.
Enstar Petroleum (Enstar Corp.).	353	S. Timb. 86.
Exxon Co. USA	119X	So. Mermentau.
Do	133	Heard.
Do	142	B. Carlin.
Do	145	Kelsey.
Do	201	S. Timb. 172.
Do	337	EI 332.
Do	338	W. Cameron 616.
Do	359	HI 337/342/343.
Do	360	W. Cameron 630.
Do	373	W. Cameron 608.
Do	472 (118)	B. Sale/Carlin.
Do	478	S. Timb. 170.
Do	479	S. Timb. 173.
Do	503	LaFe.
Fin-Oil, Inc.	445	HIA 312/313.
Florida Exploration (Odeco Oil & Gas Co.).	358	S. Timb. 86.
Forest Oil Corp. (Edwin L. Cox, Agent) (Templeton Energy).	376	Cage Ranch.
Furth Oil Company.	354	S. Timb. 86.
George D. Weatherston.	151	Kelsey.
Getty Oil Co. (Texaco Producing Inc.).	148	S. Thornwell.
Do	191	VM 120.
Do	286	SMI 268, 269, 281.
Gulf Oil Expl. Prod. Co. (Chevron U.S.A. Inc.).	134	Esther.
Do	549 (134)	Esther.
Hamilton Brothers Oil Co.	288	SMI 269, 268, 281.
Hamilton Brothers Oil Co. (Ham. Bros. Exp. Co.).	289	SMI 269, 268, 281.
Hewitt & Dougherty.	42A	Heard Ranch.
Highland Resources (Brown, George R.).	287	SMI 269, 268, 281.
Hunt Industries	291	SMI 269, 268, 281.
Joe D. Price	355	S. Timb. 86.
Ladd Petroleum Corp.	171	Lake Arthur.
Logue & Patterson.	234	O'Brien Ranch.
Mesa Petroleum Co. (Mesa Ltd. Partnership).	318	E. Cameron 332/323.
Do	438	HIA 312.
Do	492	VM 348.
Do	490	SP 12.
Do	491	SP 18.
Mitchell Energy & Dev.	238	Sal Del Ray.
Mobil Oil Corp. (Mobil Prod. TX & New Mexico).	213	SS 293.
Mobil Oil Corp. (MOEPSI).	302A	GI 95.
Do	335	GI 93.
Do	412	S. Timb. 156.
Do	323	VM 23.
Mobil Oil Corp. (Mobil Oil Exp. & Prod.).	535	SP 12.
Do	536	SP 18.
Mobil Oil Corp. (Mobil Prod. TX & New Mexico.).	21	Nona Mills.
Mobil Oil Corp. (Texas Southern Pet. Co.).	42A	Heard.
Mobil Oil Corp. (Mobil Prod. TX & New Mexico).	151	Kelsey.
Monsanto Oil Co.	235	Christmas.
Moore McCormack Energy.	300	Clear Creek.
Odeco Oil & Gas Co.	350	S. Timb. 86.
Do	540	HIA 542.
Pacific Petroleum, Inc. (Zapata).	475	E. Cameron 359.

Producer name	Contract number	Field or location
Pennzoil Producing Co. (Pennzoil Co.).	47	San Carlos.
Petro-Lewis Corp.	267	VM 320.
Do	438	HIA 312.
Phillips Petroleum Co..	348	Erath.
Do	214	Erath.
Phillips Petroleum Co. (Gen. Crude Oil Co.):	174X2	Lakeside.
Placid Oil Co	285	SMI 268, 269, 281.
Reading & Bates..	494	Eugene Island 392.
Resources Investment Corp.	378	LaBahia E.
Robert Mosbacher.	477 (97)	SW Esther.
Shell Offshore, Inc.	183	SS 230/241. S. Timb. 162/176. SS 274. SP 23/ST 72.
Do	367	HIA 350 WC 633.
Sohio Petroleum Corp.	21	Nona Mills.
Sun Expl. & Prod. Co. (Sun Oil Co.).	62R	Clear Creek.
Sun Expl. & Prod. Co.	147	Bayou Sale.
Do	122	S. Bear Head Cr.
Sun Expl. & Prod. Co (Source Petroleum).	160	Shoats Cr.
Sun Expl. & Prod. Co.	262	VM 320.
Do	263	E. Cameron 338 "A" & "B".
Do	344	El 380 "A".
Do	341	E. Cameron 338.
Sun Expl. & Prod. Co (Sun Texas Co.).	347	El 380 "A"
Sun Expl. & Prod. Co.	368	HIA 369/370.
Do	375	HIA 327/332.
Do	380	HIA 511.
Sun Expl. & Prod. Co. (Sun Texas Co.).	427	E. Cameron 353.
Sun Expl. & Prod. Co.	428	E. Cameron 353.
Do	464	El 380B.
Sun Expl. & Prod. Co. (Sun Texas Co.).	465	El 380B.
Do	495	El 392.
Do	497	W. Cameron 624.
Sun Expl. & Prod. Co.	521	HIA 542.
Superior Oil Co. (Mobil Oil Corp.).	185	Twin Island.
Do	212	SS 274 (293).
Do	8	Lakeside.
Do	174	S. Thornwell.
Do	9	Lakeside.
Do	7	Lakeside.
Tenneco Oil Co	10A	McAllen.
Do	209	S. Timb. 169/196.
Texas Crude, Inc..	110	Esther.
Texas Eastern (Samedan Oil Co.).	361	E. Cameron 359.
Transco Expl. Co. (TXP Operating Co.).	441	HI 312/313.
Union Oil Co. of Calif. (Union Exp. Part. Ltd).	512 (85)	NFWB.
Do	509 (86)	VM14.
Do	312	VM14.
Do	150	O'Brien.
Wilshire Oil Co. of Texas.	498	W. Cameron 624.
Zapata	474	E. Cameron 359.
Zapata	524	HIA 542

Trunklines states that the following seller is not receiving delivery allowances based on an area rate clause dispute:

Sun Expl. & Prod. Co.	264	W. Cameron 639.

United Gas Pipe Line Company (United)

United submits the following list of first sellers who, in United's opinion, have authority to collect delivery allowances:

Contract	First seller	Rate schedule
6249	Amax Petroleum	CS
1532	Amax Petroleum	NA
6397	Amerada Hess	173
6908	Amerada Hess	183
6877	Amerada Hess	182
6909	Amerada Hess	184
6610	Amerada Hess	176
7980	Amerada Hess	195
6380	Amerada Hess	64
7353	American Petrofina	59
7634	American Petrofina	96
7419	American Petrofina	97
7823	American Petrofina	11
4969	Amoco Production Co	543
4633	Amoco Production Co	443
6547	Amoco Production Co	NA
8364	Amoco Production Co	180
5275	Amoco Production Co	585
7074	Amoco Production Co	282
4603	Amoco Production Co	NA
7877	Amoco Production Co	839
7342	Amoco Production Co	830
6260	Amoco Production Co	757
4854	Amoco Production Co	NJ
6867	Amoco Production Co	NA
1141	Amoco Production Co	79
5859	Amoco Production Co	79
7245	Amoco Production Co	828
7488	Amoco Production Co	NA
6779	Amoco Production Co	NA
6205	Amoco Production Co	759
6415	Amoco Production Co	820
5075	Amoco Production Co	NJ
7107	ANR Production	NA
6523	ARCO	535
4900	ARCO	626
6395	ARCO	527
4254	ARCO	204
6215	ARCO	171
5221	ARCO	657
7092	ARCO	197
7516	ARCO	531
6524	ARCO	419
5976	ARCO	371
6891	ARCO	510
1597	ARCO	49
1600	ARCO	314
4921	ARCO	671
6525	ARCO	311
7583	ARCO	775
7993	ARCO	59
6830	ARCO	258
1388	ARCO	48
6573	Bass Partnership	CS
6676	Belnorth Petroleum	NA
7482	Burk Royalty	CS
7447	C & K Petroleum	CS
7470	C & K Petroleum	CS
6912	Canadian Occidental	CS
7007	Canadian Occidental	CS
7850	Canadian Occidental	CS
6960	Caroline Hunt	2
5997	Champlin	11
4401	Chevron USA	201
6885	Chevron USA	147
4654	Chevron USA	NA
1043	Chevron USA	74
6798	Chevron USA	11
7170	Chevron USA	639
5160	Chevron USA	607
6843	Chevron USA	169
4103	Chevron USA	161
6263	Chevron USA	77
7088	Chevron USA	92
5028	Chevron USA	NA
7430	Chevron USA	NA
7172	Chevron USA	270
4936	Chevron USA	49
6632	Chevron USA	NA
5020	Chevron USA	638
6678	Cities Service O & G	215
7105	Cities Service O & G	695
7341	Cities Service O & G	725
8420	Cities Service O & G	795
2578	Cities Service O & G	NA
4655	Cities Service O & G	795
6707	Cities Service O & G	374
6270	Cities Service O & G	474
5230	Cities Service O & G	390
4869	Cities Service O & G	308
6911	Cities Service O & G	CS
7006	Cities Service O & G	CS
7848	Cities Service O & G	898
5900	Cities Service O & G	363
6312	Cities Service O & G	369
6316	Cities Service O & G	106
7003	Cities Service O & G	353
6888	Cities Service O & G	677
8541	Cities Service O & G	4
6533	Cities Service O & G	651
5758	Cities Service O & G	414
8033	CNG Producing	59
8055	Cockrell Oil	8
4842	Conoco	106
1870	Conoco	143
1885	Conoco	164
4462	Conoco	NA
7728	Conoco	207
7600	Conoco	247
4729	Conoco	329
6684	Cox, Edwin L	CS
7218	Crystal Oil	CS
7562	Cummins & Walker	CS
7563	Cummins & Walker	CS
7154	D Shamrock	111
7552	D Shamrock	70
7647	D Shamrock	82
6842	DECALTA	CS
6900	DECALTA	CS
6682	DECALTA	CS
6476	DECALTA	CS
6704	DECALTA	CS
6827	DECALTA	CS
7881	DECALTA	CS
7934	DECALTA	CS
7730	Denovo O & G	CS
6480	Denovo O & G	CS
7523	Denovo O & G	CS
7849	Denovo O & G	NJ
6367	ECEE	3

Contract	First seller	Rate schedule
4727	Energy Reserves Gro	21
4747	Energy Reserves Gro	34
5637	Energy Reserves Gro	102
8407	ENSENJAY	NA
1388	Enstar Petroleum	CS
5836	Exchange O & G	33
6269	Exchange O & G	36
1433	Exxon Inc	NA
7489	Exxon Corp	158
6454	Exxon	35
7273	Exxon	677
7256	Exxon	148
7405	Exxon	149
1944	Exxon	124
7617	Exxon	680
5175	Exxon	496
6314	Exxon	123
7070	Exxon	NA
7274	Exxon	543
4659	Exxon	414
6490	Exxon	647
7395	Exxon	154
6210	Exxon	599
7275	Exxon	235
7831	Exxon	682
6983	Felmont	35
4874	Felmont	NJ
6644	Felmont	34
6277	Fin Oil Inc	CS
6930	Fin Oil Inc	3
6812	Fin Oil Inc	1
6203	Fin Oil Inc	5
6814	Fin Oil Inc	4
7576	Fin Oil Inc	10
6276	Franks Petroleum	CS
4630	Franks Petroleum	CS
7406	Franks Petroleum	CS
5129	Franks Petroleum	CS
4683	Franks Petroleum	NA
5017	Franks Petroleum	CS
7189	George R. Brown	7
8014	Getty Oil Company	108
5212	Getty Oil Company	382
7134	Getty Oil Company	20
5979	Getty Oil Company	239
6248	Getty Oil Company	417
6140	Getty Oil Company	225
6715	Getty Oil Company	137
7423	Getty Oil Company	34
1603	Getty Oil Company	23
7461	Getty Oil Company	23
6439	Getty Oil Company	75
6860	Getty Oil Company	428
6378	Getty Oil Company	423
6379	Getty Oil Company	422
5830	H.L. Bammert	CS
7933	Hanson Minerals	CS
8057	Hanson Minerals	CS
7490	Hogan Exploration	CS
7837	Hogan Exploration	CS
7334	Hogan Exploration	CS
7584	Hogan Exploration	CS
8460	Hogan Exploration	CS
8409	Hogan Exploration	CS
1561	Houston Oil & Mineral	CS
5792	Howard Hampton	CS
1083	Hunt Oil Co	20
5181	Hunt Oil Co	69
6949	Hunt Oil Co	41
5550	Hunt Oil Co	5
8056	Hunt Oil Co	5
7345	Hunt Oil Co	42
6463	Hunt Oil Co	79
6835	Hunt Oil Co	43
5186	Hunter Co	CS
5992	Hunter Co	CS
7243	Hunter Co	CS
7742	H-M Oil Co	CS
7766	H-M Oil Co	CS
6509	J-O'B Operation	CS
7783	J-O'B Operation	CS
6825	Kerr McGee	167
6955	Kerr McGee	168
7220	Kerr McGee	63
5891	Kilroy	CS
7403	Kling Oil	CS
7770	Kling Oil	CS
7398	Koch Industries	17
6581	Koch Industries	CS
8021	Koch Industries	19
7748	La Land & Exploration	NJ
7530	La Land & Exploration	NA
7462	La Land & Exploration	NA
6483	La Land & Exploration	CS
7975	La Land & Exploration	11
7450	Labelle Petr Inc	12
7077	Lamar Hunt	8
6247	LLOXY Holding Inc	5
6330	LLOXY Holding Inc	7
7136	LLOXY Holding Inc	CS
5176	Logue & Patterson	CS
5056	Logue & Patterson	CS
5102	Logue & Patterson	CS
6591	Marathon Oil Company	38
858	Marathon Oil Company	17
4412	Marathon Oil Company	52
5509	Marathon Oil Company	15
6231	Marathon Oil Company	141
6224	Marathon Oil Company	147
6604	Marathon Oil Company	163
6815	Marathon Oil Company	169
6470	Marathon Oil Company	158
7116	Marathon Oil Company	16
6235	Marathon Oil Company	14
8764	Marathon Oil Company	14
6393	Marathon Oil Company	36
7600	Marathon Oil Company	NA
8763	Marathon Oil Company	36
5555	McMoRan	CS
6967	McMoRan	CS
7246	McMoRan	CS
6789	McMoRan	CS
7111	Mesa Petroleum	141
7112	Mesa Petroleum	140
7982	Mesa Petroleum	158
7784	Mills Bennet	CS
6474	Mitchell Energy	50
6863	Mobil Expl & Prod	89
4476	Mobil Expl & Prod	45
7338	Mobil Expl & Prod	109
4822	Mobil Expl & Prod	6
4703	Mobil Expl & Prod	124
5866	Mobil Expl & Prod	28
6467	Mobil Expl & Prod	84
6536	Mobil Expl & Prod	16
6372	Mobil Expl & Prod	8
4361	Mobil Expl & Prod	25
7986	Mobil Expl & Prod	229
5803	Mobil Expl & Prod	28
6628	Mobil Expl & Prod	124
5810	Mobil Expl & Prod	59
4727	Mobil Pro Texas & NM	NA
5569	Mobil Pro Texas & NM	60
5799	Mobil Pro Texas & NM	132
7031	Mobil Pro Texas & NM	59
6461	Mobil Pro Texas & NM	153
6402	Mobil Pro Texas & NM	148
7374	Mobil Pro Texas & NM	7
7386	Mobil Pro Texas & NM	246
7788	Mobil Pro Texas & NM	NA
4717	Mobil Pro Texas & NM	76
6830	Mobil Pro Texas & NM	NA
4176	Monsanto Oil Co	31
6942	Monsanto Oil Co	111
7021	Monsanto Oil Co	112
1476	Monsanto Oil Co	16
7676	Mosbacher, Robert	CS
8646	Mosbacher, Robert	NA
4845	Newmont Oil Co	CS
8054	Nicor Exploration	CS
6079	Odeco Oil & Gas	16
6226	Odeco Oil & Gas	40
6231	Odeco Oil & Gas	39
6706	Oxy Petroleum Inc	354
8022	Oxy Petroleum Inc	NJ
5718	Par Oil	NA
6677	Par Oil	NA
8826	Par Oil	CS
7297	Paragon Resources	NA
2698	Pennzoil Producing	276
7751	Pennzoil Producing	442
2670	Pennzoil Producing	216
7400	Pennzoil Producing	216
7507	Pennzoil Producing	NA
6437	Pennzoil Producing	225
7399	Pennzoil Producing	225
2705	Pennzoil Producing	281
5961	Pennzoil Producing	306
6566	Pennzoil Producing	306
8554	Pennzoil Producing	306
8555	Pennzoil Producing	306
2663	Pennzoil Producing	NA
7217	Pennzoil Producing	223
7739	Pennzoil Producing	54
8575	Pennzoil Producing	54
2688	Pennzoil Producing	254
2686	Pennzoil Producing	245
7762	Pennzoil Producing	245
6968	Pennzoil Producing	234
2706	Pennzoil Producing	262
7513	Pennzoil Producing	305
7019	Pennzoil Producing	318
6253	Pennzoil Producing	328
7176	Pennzoil Producing	319
6746	Pennzoil Producing	316
6256	Pennzoil Producing	327
6485	Pennzoil Producing	239
7504	Pennzoil Producing	239
6563	Pennzoil Producing	NA
2692	Pennzoil Producing	2692
6430	Pennzoil Producing	308
6487	Pennzoil Producing	229
7763	Pennzoil Producing	229
7008	Pennzoil Producing	215
7216	Pennzoil Producing	86
5932	Pennzoil Producing	310
2568	Pennzoil Producing	93
6752	Pennzoil Producing	94
7959	Pennzoil Producing	93
2728	Pennzoil Producing	296
8558	Pennzoil Producing	296
7737	Pennzoil Producing	NA
2713	Pennzoil Producing	241
2695	Pennzoil Producing	270
7572	Pennzoil Producing	CS
2716	Pennzoil Producing	291
1060	Pennzoil Producing	252
3100	Pennzoil Producing	210
2628	Pennzoil Producing	253
7955	Pennzoil Producing	253
6386	Pennzoil Producing	329
8573	Pennzoil Producing	329
6820	Pennzoil Producing	330
8576	Pennzoil Producing	330
5973	Pennzoil Producing	312
5975	Pennzoil Producing	311
2703	Pennzoil Producing	240
6079	Petro-Lewis Corp	NA
4683	Phillips Petroleum	466
4727	Phillips Petroleum	664
5101	Phillips Petroleum	487
5807	Phillips Petroleum	39
6489	Phillips Petroleum	640
7424	Phillips Petroleum	675
6948	Phillips Petroleum	53
6916	Phillips Petroleum	357
4818	Phillips Petroleum	30
5105	Phillips Petroleum	493
4816	Phillips Petroleum	442
5838	Phillips Petroleum	10
7265	Phillips Petroleum	NA
7307	Phillips Petroleum	60
7309	Phillips Petroleum	61

Contract	First seller	Rate schedule
7280	Phillips Petroleum	64
7293	Phillips Petroleum	680
7308	Phillips Petroleum	58
7310	Phillips Petroleum	59
7574	Phillips Richard	CS
5013	Phoenix Resources	CS
6559	Pinto Inc	7
6370	Pinto Inc	5
6368	Pinto Inc	6
5790	Pinto Inc	2
6275	Placid Oil	NA
7917	Placid Oil	71
7941	Placid Oil	NA
7650	Pogo	54
5971	Pogo	10
6021	Pogo	28
6733	Pogo	43
6750	Pogo	38
6251	Pogo	37
7179	Pogo	56
6550	Pogo	33
6551	Pogo	32
6552	Pogo	34
6553	Pogo	31
6734	Pogo	44
6735	Pogo	42
6736	Pogo	39
6737	Pogo	41
6738	Pogo	40
7845	Pogo	55
6254	Pogo	36
7820	Pogo	57
7180	Pogo	51
7924	Pogo	58
7819	Pogo	56
5931	Pogo	5
6790	Pogo	47
6791	Pogo	46
6792	Pogo	45
7710	Pogo	NA
7884	Pogo	NA
6793	Pogo	48
6022	Pogo	18
6722	Pogo	35
5972	Pogo	6
5974	Pogo	7
6019	Pogo	16
6020	Pogo	15
8878	Pogo	15
5764	Pogo	4
7409	Pogo Producing Co	NA
6021	Pogo Producing Co	74
7613	Pogo Producing Co	74
5971	Pogo Producing Co	10
6739	Pogo Producing Co	48
6740	Pogo Producing Co	44
6252	Pogo Producing Co	72
8784	Pogo Producing Co	72
7185	Pogo Producing Co	50
6554	Pogo Producing Co	40
6555	Pogo Producing Co	38
6556	Pogo Producing Co	37
6557	Pogo Producing Co	39
6741	Pogo Producing Co	49
6742	Pogo Producing Co	49
6743	Pogo Producing Co	46
6744	Pogo Producing Co	45
6745	Pogo Producing Co	47
7871	Pogo Producing Co	61
6255	Pogo Producing Co	73
7799	Pogo Producing Co	62
7184	Pogo Producing Co	57
7931	Pogo Producing Co	NA
5931	Pogo Producing Co	5
6794	Pogo Producing Co	52
6795	Pogo Producing Co	54
6796	Pogo Producing Co	53
7122	Pogo Producing Co	76
7651	Pogo Producing Co	58
7795	Pogo Producing Co	51
6797	Pogo Producing Co	71
6022	Pogo Producing Co	43
7410	Pogo Producing Co	NA
6723	Pogo Producing Co	43
5972	Pogo Producing Co	6
5974	Pogo Producing Co	7
6019	Pogo Producing Co	16
6020	Pogo Producing Co	68
5764	Pogo Producing Co	4
6643	Pomery Oil Corp	12
7382	Res Invest Corp	CS
4879	Riceland Petroleum	522
6384	Rosewood	20
7141	Samson Resources Co	CS
7870	San Patricio	CS
6691	Saxon Oil Co	CS
7062	Semco	NA
4844	Shell Offshore Inc	12
4937	Shell Offshore Inc	19
6544	Shell Offshore Inc	50
6985	Shell Offshore Inc	55
6624	Shell Oil Co	152
6622	Shell Oil Co	147
6621	Shell Oil Co	153
4753	Shell Oil Co	350
6623	Shell Oil Co	214
6620	Shell Oil Co	50
5190	Shell Western E & P	130
5192	Shell Western E & P	131
8434	Sohio	42
6298	Sonat	F-18
8069	Sooner Resources	CS
7745	Sparkman Producing	CS
7816	Sugar Creek	CS
6696	Summit Energy	CS
7291	Sun Expl & Product	534
4626	Sun Expl & Product	202
4727	Sun Expl & Product	218
7370	Sun Expl & Product	378
5995	Sun Expl & Product	21
5081	Sun Expl & Product	514
6469	Sun Expl & Product	382
4921	Sun Expl & Product	290
6473	Sun Expl & Product	352
5113	Sun Expl & Product	499
4617	Sun Exploration	200
6155	Sun Exploration	593
7655	Sun Exploration	288
5996	Sun Exploration	18
6868	Sun Exploration	361
5686	Sun Exploration	530
7495	Sun Exploration	542
4898	Sun Exploration	472
1293	Sun Exploration	270
4393	Sun Exploration	394
7344	Sun Exploration	394
4328	Sun Exploration	374
7272	Sun Gas Company	114
7103	Sun Gas Company	CS
7279	Sun Gas Company	374
6564	Superior Oil Company	89
6457	Superior Oil Company	108
6456	Superior Oil Company	71
7458	Superior Oil Company	NA
6478	Superior Oil Company	6
6685	Superior Oil Company	81
6686	Superior Oil Company	81
6385	TBP Offshore	CS
6373	TBP Offshore	CS
5598	Tenneco Oil Company	289
451	Tenneco Oil Company	89
7350	Tenneco Oil Company	261
7629	Tenneco Oil Company	NA
6970	Tenneco Oil Company	337
7890	Tenneco Oil Company	437
5591	Tenneco Oil Company	2
7836	Tenneco Oil Company	436
1042	Tenneco Oil Company	77
4345	Texaco Inc	108
4346	Texaco Inc	108
1343	Texaco Inc	101
6869	Texaco Inc	101
4712	Texaco Inc	399
5027	Texaco Inc	452
6309	Texaco Inc	564
7090	Texaco Inc	48
516	Texaco Inc	495
4908	Texaco Inc	427
4293	Texaco Inc	199
5570	Texaco Inc	102
7799	Texaco Inc	62
7931	Texaco Inc	123
4386	Texaco Inc	223
7719	Texaco Inc	223
5960	Texaco Inc	534
6408	Texaco Inc	189
7140	Texaco Inc	NA
6391	Texaco Inc	275
7768	Texaco Inc	NA
4675	Texaco Inc	390
7511	Texaco Inc	NA
5114	Texaco Inc	462
4237	Texaco Inc	194
8386	Texaco Inc	NA
5881	Texaco Production	63
4506	Texaco Production	34
6369	Texaco Production	CS
7987	Texoma	6
6876	Transco	47
6951	Transco	50
6665	Trition Oil	NA
6656	Trition Oil	NA
7474	Twin Eagle	CS
7251	Union Exploration Par	263
7258	Union Exploration Par	262
5107	Union Exploration Par	207
1365	Union Oil of Calif	856
5341	Union Oil of Calif	NJ
4353	Union Oil of Calif	49
4853	Union Oil of Calif	193
7153	Union Oil of Calif	NA
7365	Union Oil of Calif	523
5854	Union Oil of Calif	127
8028	Union Oil of Calif	CS
7885	Union Texas	NA
7474	Vintage Petroleum	CS
6658	Visa Inc	1
6371	Visa Inc	2
5018	Warren Petroleum	59
7696	Wofford	NA
7948	Zapata Expl	5

United submits the following list of first sellers who have invoiced United for delivery allowances but, in United's opinion, are not entitled to collect delivery allowances:

Contract	Producer	Rate Schedule	Contract date
7107	ANR Production	NA	4-23-80
7482	Burk Royalty	CS	5-12-81
7447	C & K Petroleum	CS	4-27-81
6684	Cox, Edwin L	CS	5-11-79
7562	Cummins & Walker.	CS	7-21-81
7563	Cummins & Walker.	CS	7-22-81
1433	Exxon Inc	NA	6-19-51
6835	Hunt Oil Co	43	1-31-79
5186	Hunter Co	CS	12-10-71
7742	H-M Oil Co	CS	1-14-82
7766	H-M Oil Co	CS	2-07-82
7783	J-O'B Operation	CS	11-23-81
6955	Kerr McGee	163	11-07-79
7220	Kerr McGee	63	10-21-80
5891	Kilroy	CS	9-02-75
7403	Kling Oil	CS	3-01-74

Contract	Producer	Rate Schedule	Contract date
7112	Mesa Petroleum	140	4-24-80
7676	Mosbacher, Robert.	CS	7-22-81
8646	Mosbacker, Robert.	NA	5-24-83
8826	Par Oil	CS	12-06-84
6079	Petro-Lewis Corp.	NA	9-09-76
6489	Phillips Petroleum.	640	9-22-78
4727	Phillips Petroleum.	664	4-20-67
7122	Pogo Producing Co.	76	5-19-80
7382	Res Invest Corp	CS	11-14-80
7141	Samson Resources Co.	CS	8-05-80
6691	Saxon Oil Co	CS	5-29-79
8069	Sooner Resources.	CS	9-09-82
6696	Summit Energy	CS	5-28-79
7474	Twin Eagle	CS	4-06-81
4853	Union Oil of Calif.	193	10-14-68

Williams Natural Gas Company (WNG)

WNG submits the following list in which it concurs in the sellers claim of contractual authority to collect production-related costs:

Seller	Contract No.	Contract date
Phillips Petroleum Company	1491	7-23-63
Do	1839	12-30-71
Do	2013	1-15-75
Do	1432	1-23-63
Do	2419	4-14-78
Do	2925	8-11-80
Hondo Oil & Gas Company	2200	12-16-76
Union Pacific Resources Co	0730	3-21-49
Do	1464	8-13-63
Cities Service Oil & Gas Co	0808	7-13-53
Do	1395	7-16-62
Conoco, Inc	2571	3-5-79
Do	2640	3-6-79
Union Texas Petroleum	2655	7-9-79
Getty Oil Company	0660	8-28-45
Do	1182	11-10-58
J.M. Huber	1567	7-8-65
Kerr McGee Corporation	1418	12-22-62
Guthrie Oil Company	1278	10-7-60
Ladd Petroleum Corporation	1448	4-17-63
John Lockridge	3239	2-26-82
Mesa Operating Ltd. Partnership	706	3-12-48
Mobil Oil Corporation	0675	2-28-46
Do	0678	6-17-46
Do	1316	3-1-61
Do	1884	8-31-72
Do	3025	4-23-52
Sun Gas Company	1647	12-30-66
Do	1972	7-8-74
Do	2082	12-10-75
Do	2799	1-17-80
Tenneco Oil Company	1595	12-31-65
Do	1637	10-21-66
Do	1711	9-24-68
Do	3337	3-12-48
Do	3338	3-12-48
Graves Drilling Company	1649	3-10-67
Don Walker	2900	6-30-80
Do	3222	2-12-82

WNG disputes the contractual authority to collect delivery allowances of the following:

Seller	Contract No.	Contract date
Ward Petroleum Corporation	1405	10-4-62
Cabot Corporation	1217	8-11-59
Do	1218	8-12-59
Cities Service Oil & Gas Co	0743	11-18-49
BHP Petroleum (Americas), Inc	2859	4-14-80
Exxon Corporation	1620	6-13-66
Getty Oil Corporation	1767	8-26-70
Do	2416	3-09-78
Superior Oil Company	2828	2-12-80
Multistate Oil Properties	1646	3-8-67
Tenneco Oil Company	1754	10-23-70
Do	2307	8-1-17
Do	2318	8-29-77
Do	2323	9-1-77
Do	2324	9-1-77
Do	3273	5-18-82
Grant Oil Company	3264	5-1-82

Williston Basin Interstate Pipeline Company (Williston Basin)

Williston Basin submits that the following do not have authority to collect maximum delivery allowances:

Williston Basin Contract	First seller field location	Rate schedule number or contract date
P-1-028	Al Aquitaine-Fairview	CS76-44
P-2-084	Amerada Hess Corp.-Tioga	12-4-80
P-2-115	Amerada Hess Corp.-Tioga	RS-95
P-4-055	Amoco Prod. Co.-Elk Basin	RS-409
P-2-006	Amoco Prod. Co.-L. Knife	RS-784
P-1-031	ANR Production-State Line	2-1-78
P-1-031	CSX Oil & Gas-State Line	2-1-78
P-1-031	Lehndorff Min./LGB-State Line	2-1-78
P-1-031	Utex Oil & Gas-State Line	2-1-78
P-4-006	Arco Oil & Gas-Recluse	RS-612
R-4-012	BHP Petroleum	7-1-68
R-4-015	Beard Oil	7-1-68
R-4-011	Consolidated Oil & Gas	7-1-68
R-4-013	National Coop. Ref.	7-1-68
R-4-014	Sohio Petroleum	7-1-68
R-4-016	Union Oil Company	7-1-68
P-2-063	Chevron U.S.A. (Gulf)-L. Knife	RS-589
R-2-011	Exeter Exploration	7-26-78
R-2-012	Fina Oil & Gas	7-26-78
R-2-012	American Cometra	7-26-78
R-2-012	Koch Exploration	7-26-78
P-1-035	E.M. Nominee (Tenneco)-Fairview	11-19-74
I-1-010	King Resources	11-19-74
P-2-090	Enron Oil & Gas (Holly)-Boxcar Butte	6-14-77
P-2-087	Enron Oil & Gas (Holly)-Boxcar Butte	4-26-76
P-2-092	Enron Oil & Gas (Holly)-Boxcar Butte	6-14-77
P-2-093	Enron Oil & Gas (Holly)-Boxcar Butte	6-14-77
I-1-009	Enstar Petroleum-Fairview	6-2-77
P-1-024	EP Operating (Ensearch)-Fairview	11-30-78
P-1-015	F.U.C.E.-Fairview	10-17-77
P-1-016	F.U.C.E.-Fairview	11-10-77
P-2-096	Hunt, Wm. Hert. Tr.-Boxcar Butte	RS-15
P-2-015	Kerr-McGee-Boxcar Butte	5-31-77
P-2-013	Kerr-McGee-Boxcar Butte	RS-136
P-2-014	Kerr-McGee-Boxcar Butte	RS-144
P-2-016	Kerr-McGee-Boxcar Butte	RS-139

Williston Basin Contract	First seller field location	Rate schedule number or contract date
P-2-011	Kerr-McGee-Boxcar Butte	RS-141
P-2-010	Kerr-McGee-Boxcar Butte	RS-138
D-2-016	Kerr-McGee-Boxcar Butte	1-20-76
P-2-012	Kerr-McGee-Boxcar Butte	RS-146
P-2-020	Kerr-McGee-Boxcar Butte	RS-135
P-1-026	Ladd Petroluem-Fairview	3-17-77
P-1-025	Luff Exploration-Fairview	2-8-77
P-4-108	Natural Gas Proc. (Mobil)-Manderson	RS-212
P-4-098	Newman Gros.-Manderson	SP(CS71-1062)
P-2-021	Oxy Cities Service-Lignite	RS-506
P-1-044	Pennzoil-Fairfiew	RS-45
P-2-084	Phillips 66 (Aminoil)-Tioga	RS-8
D-2-008	Phillips Pet.-Williston	RS-641
P-4-109	Sohio Petroleum-Manderson	RS-2
P-2-104	Texakota-Tioga	CS-76-222
P-4-104	Hunt, Hassie-Pavillion	RS-45
P-4-045	Western Gas Proc. (MGPC)-UTE	RS-2
P-1-048	Western Gas Proc. (MGPC)-Fairview	RS-1
P-1-049	Western Gas Proc. (MGPC)-Sioux Pass	5-9-76

Additional Filings—Panhandle Eastern Pipeline Company (Panhandle)

Panhandle on February 17, 1988, provided the following schedule of contracts not receiving delivery allowance based on an area rate clause in dispute:

Company name	Contract No.	Contract date
Rodman Petroleum Corp	2842	04-18-80
Texas American Energy Corp	2695	12-07-79
Premier Resources, Ltd	1605	11-13-74
Do	1626	12-16-74
Conoco, Inc	2367	11-10-78
Do	2593	04-01-79
Sun Exploration & Production Co	2692	12-07-79
Texas American Energy Corp	3055	02-16-81
Do	2827	05-05-80
Do	2681	11-13-79
Do	2326	01-15-79

[FR Doc. 88-12684 Filed 6-7-88; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 86N-0009]

Clinical Chemistry and Clinical Toxicology Devices; Exemptions From Premarket Notification

AGENCY: Food and Drug Administration HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is exempting from the requirement of premarket notification, with limitations, 21 generic types of class I clinical chemistry and clinical toxicology devices. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

EFFECTIVE DATE: July 8, 1988.

FOR FURTHER INFORMATION CONTACT: Kaiser Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: class I, general controls; class II, performance standards; and class III, premarket approval.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR Part 807, Subpart E. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendments devices, the agency did not routinely evaluate whether it should grant to manufacturers of devices placed in class I an exemption from the requirement of premarket notification. Generally, FDA considered such exemptions only when the advisory panels included them in recommendations to the agency.

Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification, to reduce the number of unnecessary premarket notifications thereby freeing agency resources for the review of more complex notifications.

FDA believes that exempting these devices will allow the agency to make better use of its resources and thus better serve the public. In other words, the process of exempting these devices from the 510(k) premarket notification program, where premarket notification will not advance FDA's public health mission, will free additional resources to address pressing regulatory concerns and will make the agency more efficient. The development of exemption criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification will help implement a goal in FDA's May 1987 "A Plan for Action Phase II" (Ref. 1).

On May 1, 1987 (52 FR 16102), FDA published a final regulation classifying 220 clinical chemistry and clinical toxicology devices. Also on May 1, 1987 (52 FR 16139), FDA proposed to exempt from premarket notification requirements 21 of those clinical chemistry and clinical toxicology devices. Interested persons were given until June 30, 1987, to comment. No comments were received. Therefore, FDA is adopting the regulation as proposed.

Criteria for 510(k) Exemptions

FDA is exempting generic types of class I devices from the requirement of premarket notification with the limitations described below, if FDA determines that premarket notification is unnecessary for the protection of the public health. FDA may grant an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (i) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (ii) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) that any changes of the device will not be likely to result in a change in the device's classification.

FDA will make the determinations above based on its knowledge of the device, including past experience and relevant reports or studies on device performance.

FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA in the context of premarket notification. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(1) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(2) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Reference

The following information has been placed in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action Phase II," Public Health Service, Department of Health and Human Services, May 1987, p. 9.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has determined that the final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed, and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order.

The devices subject to this proposed rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j).

List of Subjects in 21 CFR Part 862

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 862 is amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR Part 862 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. A new § 862.9 is added to read as follows:

§ 862.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA)

probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. Section 862.1190 is amended by revising paragraph (b) to read as follows:

§ 862.1190 Copper test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

4. Section 862.1210 is amended by revising paragraph (b) to read as follows:

§ 862.1210 Creatine test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

5. Section 862.1255 is amended by revising paragraph (b) to read as follows:

§ 862.1255 2,3-Diphosphoglyceric acid test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

6. Section 862.1290 is amended by revising paragraph (b) to read as follows:

§ 862.1290 Fatty acids test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

7. Section 862.1305 is amended by revising paragraph (b) to read as follows:

§ 862.1305 Formiminoglutamic acid (FIGLU) test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

8. Section 862.1320 is amended by revising paragraph (b) to read as follows:

§ 862.1320 Gastric acidity test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

9. Section 862.1365 is amended by revising paragraph (b) to read as follows:

§ 862.1365 Glutathione test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

10. Section 862.1380 is amended by revising paragraph (b) to read as follows:

§ 862.1380 Hydroxybutyric dehydrogenase test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

11. Section 862.1420 is amended by revising paragraph (b) to read as follows:

§ 862.1420 Isocitric dehydrogenase test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

12. Section 862.1470 is amended by revising paragraph (b) to read as follows:

§ 862.1470 Lipid (total) test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

13. Section 862.1490 is amended by revising paragraph (b) to read as follows:

§ 862.1490 Lysozyme (muramidase) test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

14. Section 862.1515 is amended by revising paragraph (b) to read as follows:

§ 862.1515 Nitrogen (amino-nitrogen) test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

15. Section 862.1565 is amended by revising paragraph (b) to read as follows:

§ 862.1565 6-Phosphogluconate dehydrogenase test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

16. Section 862.1575 is amended by revising paragraph (b) to read as follows:

§ 862.1575 Phospholipid test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

17. Section 862.1640 is amended by revising paragraph (b) to read as follows:

§ 862.1640 Protein-bound iodine test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

18. Section 862.1670 is amended by revising paragraph (b) to read as follows:

§ 862.1670 Sorbitol dehydrogenase test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

19. Section 862.1720 is amended by revising paragraph (b) to read as follows:

§ 862.1720 Triose phosphate isomerase test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

20. Section 862.1815 is amended by revising paragraph (b) to read as follows:

§ 862.1815 Vitamin E test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

21. Section 862.2100 is amended by revising paragraph (b) to read as follows:

§ 862.2100 Calculator/data processing module for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

22. Section 862.3750 is amended by revising paragraph (b) to read as follows:

§ 862.3750 Quinine test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

23. Section 862.3850 is amended by revising paragraph (b) to read as follows:

§ 862.3850 Sulfonamide test system.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

Dated: May 18, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-12855 Filed 6-7-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Amendments to the Arkansas Permanent Regulatory Program; Correction

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

ACTION: Final rule; correction.

SUMMARY: This notice corrects a final rule published in the Federal Register on March 28, 1988 (53 FR 9881) that approved parts of an amendment submitted by the State of Arkansas as a modification to its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977. In the codified section of the notice, OSMRE inadvertently omitted sections of the Arkansas Surface Coal Mining and Reclamation Code from the list of state regulations the Director approved and incorrectly cited a State regulation for which, OSMRE requires an amendment.

FOR FURTHER INFORMATION CONTACT: Mr. James Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Corrections

In FR Doc. 88-6693, appearing in the Federal Register Monday, March 28, 1988, page 9881, the following corrections are made:

1. In paragraph (d) of § 904.15, on page 9885, the following sections are added in numerical order: 784.20(a) (1) and (2), 784.20(b)(1), 784.20(e), 807.11(d)(2)(v), 845.13(b)(2)(i), 845.15(b)(1) (i) and (ii), and 845.15(b)(2).

2. Paragraph (b) of § 904.16, on page 9885, is corrected by changing "1000(51)" to "1000(50)".

Date: May 30, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88-12892 Filed 6-7-88; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL-3373-9]

State Underground Injection Control Programs; Illinois

AGENCY: United States Environmental Protection Agency (U.S. EPA).

ACTION: Notice of the U.S. EPA's action to terminate withdrawal proceedings.

SUMMARY: The U.S. EPA announces the termination of withdrawal proceedings regarding Illinois' Class II Underground Injection Control (UIC) program administered by the Illinois Department of Mines and Minerals (IDMM). The State has primary enforcement responsibility for this program under section 1425 of the Safe Drinking Water Act (SDWA) as amended, 42 U.S.C. 300h-4. This action terminates the withdrawal process that was initiated on December 12, 1986, when the Governor of Illinois was notified by the Administrator that the U.S. EPA was initiating procedures to withdraw program authority from the State. A public hearing to discuss withdrawal was held on July 8, 1987, in Ina, Illinois and was followed by a thirty (30) day comment period.

Since that time, the U.S. EPA's audits of the program, which were conducted on August 26-30, 1987 and March 7-11, 1988, have shown significant improvement in the program to such an extent that it has been determined that the program is effective in protecting Underground Sources of Drinking Water (USDW). As a result, the U.S. EPA has terminated withdrawal proceedings.

EFFECTIVE DATE: April 1, 1988.

ADDRESSES: Copies of documents regarding this action are available at the following address for review. Underground Injection Control Section (5WD-TUB-9), Safe Drinking Water Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Crivello, Safe Drinking Water Branch (5WD-TUB-9), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-2929.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 1981, Illinois applied for primary enforcement responsibility (primacy) for the State's Class II UIC program under section 1425 of the SDWA. The SDWA established the Class II UIC program to protect USDW from possible adverse impacts that could result from the improper injection of fluids associated with the production of oil and gas.

On February 1, 1984, the U.S. EPA granted primacy to Illinois. The State designated the IDMM as the implementing agency. This authorization of primacy is codified at 40 CFR 147.701. In approving Illinois' primacy, the U.S. EPA also approved the State's program description, Memorandum of Agreement, and associated program commitments from the IDMM. These program commitments included implementing an effective program of regulations and enforcement to ensure that USDW would be protected.

In April 1985, the U.S. EPA conducted a routine evaluation of the State's Class II program administered by the IDMM. The evaluation raised a number of questions about the program; as a result, the U.S. EPA conducted a detailed, in-depth evaluation which culminated in the report entitled, *Evaluation of the Illinois Department of Mines and Minerals, Division of Oil and Gas, Class II Underground Injection Control Program Report.* This report outlined a number of concerns that the U.S. EPA had about the program and its ability to ensure protection of USDW. The report included corrective actions that needed to be instituted by the DMM in order to achieve a program that would be effective in protecting USDW. This report was transmitted to the Director of the IDMM on December 13, 1985. Throughout 1986, Region V representatives met with representatives of the State of Illinois; however, these negotiations failed to bring about the necessary program changes. In July, 1986, the Region V Administrator notified the Governor of Illinois of his intention to recommend to the U.S. EPA Administrator that the State's authority to administer the Class II program be withdrawn.

In November of 1986, another audit of the program was conducted by the U.S.

EPA, Region V. Region V personnel reviewed records and interviewed the IDMM's personnel to determine if the recommendations outlined in the previous report had been put into practice. The results of the audit showed that significant progress had not been made. These results were compiled into a report entitled *Fiscal Year 1986 End of the Year Evaluation of the Illinois Department of Mines and Minerals, Division of Oil and Gas, Class II Underground Injection Control Program.* This report was transmitted to the State in December 1986.

On December 17, 1986, the U.S. EPA Administrator notified the Governor of Illinois that authority to administer the Illinois Class II program would be withdrawn unless the State could show that its program was effective in protecting USDW.

A public hearing was held on July 8, 1987, to solicit comments from the public and regulated community on the U.S. EPA's proposed action to withdraw primacy from the State. By this time Region V had observed several improvements in the State's program. These included the addition of a technical staff to review permits and conduct file reviews, a compliance manager to direct and track enforcement activities, and the assignment of existing field personnel solely to UIC activities.

Beginning on August 26, 1987, Region V conducted an audit of the present UIC program. The results of this audit showed that the State had made significant improvements to its program. These improvements included the following:

- In 1987, a new UIC Manager position was created and filled. In addition, five (5) technical positions, an enforcement coordinator, and an additional field inspector were all added to the State UIC program. Five (5) field inspectors and a pollution control officer previously assigned to petroleum and UIC activities were reassigned to exclusively UIC activities.
- Prior to 1987, the State did not request any Federal funds nor was the program included in the State budget. In 1987, the State applied for and received $188,689 in Federal grant funds which were used to fund the addition of UIC staff, data management equipment, and office equipment.

The State applied for an FY '88 grant in July, 1987. This application was approved on September 29, 1987.

- The IDMM completed a verified inventory of Class II injection wells in the State. To date, the inventory shows 13,256 Class II wells in the State.
- UIC permit applications were being reviewed by a technical staff composed of geologists, petroleum engineers, an enforcement coordinator, and a hydrologist.
- File reviews were being conducted by technically trained staff and were qualitative as well as quantitative. In the grant application for FY '88, which was approved by Region V, the State committed to complete all file reviews by July 1, 1992. This was to be accomplished by completing approximately 730 well record reviews per quarter.
- The State had established a UIC inspection program that was separate from the oil and gas program. This resulted in more resources being devoted to the monitoring of Class II injection activities, and a more informed and better trained field staff.
- The IDMM had computerized its data management function. This allowed better tracking of inspections and Mechanical Integrity (MI), and required operators to perform remedial actions. 1987 was the first year in which the IDMM required operators to perform remedial action. 1987 was the first year in which the IDMM required operators to perform pressure tests on existing Class II wells.
- The IDMM had taken steps to identify wells that lacked MI, and required operators to perform remedial actions. In 1987, the IDMM began requiring their operators to perform pressure tests on existing Class II wells.

After evaluating these actions, the U.S. EPA was able to determine that the State's Class II UIC program was effective in protecting USDW. As a result, the U.S. EPA has notified the Governor of Illinois of its decision to terminate withdrawal proceedings. The U.S. EPA will continue to provide close oversight of the program and take whatever actions are necessary to insure that the State continues to provide effective protection of USDW from contamination by injection activities. The U.S. EPA will do this through periodic program evaluations, grant funding and workplan review, independent enforcement actions, and if necessary, can begin withdrawal procedures again.

Authority: 42 U.S.C. 300f–300j.

Dated: April 21, 1988.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88–10995 Filed 6–7–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 6F3366, 7F3542/R965; FLR–3392–8]

Pesticide Tolerances for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the fungicide iprodione in or on caneberries and potatoes. This regulation to establish the maximum permissible level for residues of iprodione in or on these raw agricultural commodities was requested by Rhone-Poulenc, Inc.

EFFECTIVE DATE: Effective on June 8, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–1900.

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the **Federal Register** of March 19, 1986 (51 FR 9514) and November 25, 1987 (52 FR 45237), which announced that Rhone-Poulenc, Inc., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted pesticide petitions (PP 6F3366 and PP 7F3542 for potatoes and caneberries, respectively) to EPA proposing that 40 CFR Part 180 be amended by establishing tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-N-(3,5-dischlorophenyl)-2,4-dioxol-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on potatoes at 0.5 part per million (ppm) and in or on caneberries at 25.0 ppm.

There were no comments received in response to the notices of filing.

The data submitted in the petitions and other relevant material have been evaluated. The data considered include:

1. A three-generation rat reproduction study using dosage levels of 0, 250, 500, and 2,000 ppm with a no-observed-effect

level (NOEL) of 500 ppm (25 milligrams per kilogram of body weight per day (mg/kg bwt/day)), a reproductive lowest-effect level (LEL) of 2,000 ppm (100 mg/kg bwt/day), and a systemic NOEL equal to or greater than 2,000 ppm (100 mg/kg bwt/day);

2. A rabbit teratology study in which the following doses were administered by gavage: 0, 20, 60, and 200 mg/kg bwt, resulting in a teratogenic NOEL equal to or greater than 60 mg/kg bwt;

3. A rat teratology study in which the following doses were administered by gavage: 0, 40, 90, and 200 mg/kg bwt, resulting in a teratogenic NOEL equal to 90 mg/kg bwt (considered supplementary under current guidelines and may be upgraded to minimum with additional information);

4. A 24-month feeding/oncogenicity study in rats using dosage levels of 125, 250, and 1,000 ppm (6.25, 12.5, and 50 mg/kg bwt/day), which showed no oncogenic effects under the conditions of the study;

5. An 18-month oncogenicity study in mice using dosage levels of 200, 500, and 1,250 ppm (28.6, 71.4, and 178.6 mg/kg bwt/day), which showed no oncogenic effects under the conditions of the study.

6. A 1-year dog feeding study using dosage levels of 168, 600, and 3,600 ppm (4.2, 15, and 90 mg/kg bwt/day) with a NOEL of 168 ppm (4.2 mg/kg bwt/day) and an LEL of 600 ppm (15 mg/kg bwt/day); and

7. A 90-day dog feeding study using dosage levels of 800, 2,400, and 7,200 ppm (20, 60, and 180 mg/kg bwt/day) with a NOEL of 2,400 ppm (60 mg/kg bwt/day) and an LEL of 7,200 ppm (180 mg/kg bwt/day).

Data currently lacking include an appropriate toxicology laboratory animal metabolism study and a potato processing study. The metabolism study is currently under review by Agency scientists. The Agency expects the potato processing study to be submitted within 4 months.

The acceptable daily intake (ADI) based on the NOEL of 4.2 mg/kg bwt/day from the 1-year dog feeding study and using a hundredfold safety factor, is calculated to be 0.04 mg/kg bwt/day. The theoretical maximum residue contribution from the proposed tolerances are 0.000835 mg/kg/day and utilizes 2.09 percent of the ADI. These tolerances and the previously established tolerances utilize a total of 110.0 percent of the ADI for the U.S. population average.

Although the TMRC based on all established tolerances for iprodione exceeds the ADI, the Agency believes that the actual residues to which the public is likely to be exposed are considerably less than indicated by the TMRC for the following reasons:

1. Not all the planted crop for which a tolerance is established is normally treated with the pesticide.

2. Most treated crops have residue levels which are below the established tolerance level.

3. Residues are frequently reduced when foods are processed or prepared for human consumption.

4. Not all crops contributing to the TMRC are likely to be consumed by an individual.

There are no regulatory actions pending against the registration of iprodione. The metabolism of iprodione in plants and animals, except for general laboratory animal metabolism, is adequately understood for purposes of the tolerances. An analytical method, gas liquid chromatography using an electron capture detector, is available in Volume II of the *Pesticide Analytical Manual* for enforcement purposes.

The pesticide is useful for the purposes for which the tolerances are sought. Based on the data and information considered by the Agency, it is concluded that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

This tolerance for potatoes will expire 1 year after the date of publication of this final rule. Based on the review of the potato processing data, the Agency will determine whether the issuance of a permanent tolerance is appropriate.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 27, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.399(a) is amended by adding and alphabetically inserting the commodities caneberries and potatoes, to read as follows:

§ 180.399 Iprodione; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Caneberries	25.0
* * * * *	
Potatoes	[1] 0.5
* * * * *	

[1] This tolerance expires June 8, 1989.

[FR Doc. 88-12766 Filed 6-7-88; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300187A; FRL-3393-7]

Definitions and Interpretations; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends 40 CFR 180.1 by adding an entry for blackberries in the commodity definitions and by revising the existing commodity definition for caneberries. The amendment, which will define the commodity terms for tolerance purposes, was requested by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: June 8, 1988.

ADDRESS: Written objections, identified by the document control number, [OPP-

300187A], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of April 28, 1988 (53 FR 15239), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted a request to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the IR–4 Technical Committee that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose an amendment to 40 CFR 180.1(h) to add "blackberries" to the general category of commodities listed in column A and to define that commodity as "*Rubus eubatus* (including dewberries, lowberries, boysenberries, marionberries, olallieberries, Oregon evergreen berries, coryberries, Himalayaberries, Lucretiaberries, bingleberries, mammoth blackberries, phenomenalberries, rossberries, Lavacaberries, nectarberries, Shawnee blackberries, Cheyenne blackberries, Cherokee blackberries, hullberries, Chesterberries, black satin berries, Dirksen thornless berries, darrowberries, ravenberries, rangerberries, and varieties and/or hybrids of these)" by inserting these corresponding commodities in the specific commodities listing in column B. The IR–4 requested this amendment in order to more specifically define the commodity term "blackberries."

The commodity terms "blackberries," "boysenberries," and "dewberries" are also listed in column B of 40 CFR 180.1(h) as specific raw agricultural commodities for the general commodity "caneberries." In order to make the crop definition for caneberries consistent with the blackberry definition, the commodity terms "blackberries," "dewberries," and "boysenberries" are deleted from the specific commodities listing corresponding to the general commodity "caneberries" and replaced by the commodity term "*Rhubus* spp. (including blackberries)," so that the entry in column B reads as follows: "*Rubus* spp. (including blackberries); *Rubus caesium* (youngberries); *Rubus loganbaccus* (loganberries); *Rubus occidentalis, idaeus*, and *strigosus* (red and black raspberries); and varieties and/or hybrids of these."

The Agency concludes that tolerances established for the general category commodity "caneberries" and blackberries should be adequate to cover pesticide residues on the corresponding specific commodities based on the botanical relationship of the commodities and the similarity of the pest problems and pesticide application methods.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 1, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1(h) is amended by revising the definition for caneberries and by adding a definition for blackberries, to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
*	*
Black-berries.	*Rubus eubatus* (including bingleberries, black satin berries, boysenberries, Cherokee blackberries, Chesterberries, Cheyenne blackberries, coryberries, darrowberries, dewberries, Dirksen thornless berries, Himalayaberries, hullberries, Lavacaberries, lowberries, Lucretiaberries, mammoth blackberries, marionberries, nectarberries, olallieberries, Oregon evergreen berries, phenomenalberries, rangerberries, ravenberries, rossberries, Shawnee blackberries, and varieties and/or hybrids of these).
*	*
Cane-berries.	*Rubus* spp. (including blackberries; *Rubus caesius* (youngberry); *Rubus loganbaccus* (loganberry); *Rubus occidentalis, idaeus*, and *strigosus* (red and black raspberries); and varieties and/or hybrids of these.
*	*

[FR Doc. 88–12889 Filed 6–7–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 94

[PR Docket No. 87–5]

Amendment of Parts 2, 22, and 94 of the Rules Regarding Use of the 928–960 MHz Band for Point-to-Multipoint Operations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in the Report and Order in PR Docket 87–7, published at 53 FR 11855, April 11, 1988.

EFFECTIVE DATE: June 8, 1988.

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

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Private Radio Bureau, (202) 634–2443.

Erratum

(Released: April 29, 1988.

In the matter of amendment of §§ 22.501(g)(2) and 94.65(a)(1) of the rules and regulations to re-channel the 900 MHz multiple address frequencies PR Docket 87–5, RM–5206; amendment of § 94.65(a)(1) of the rules to revise footnote 3 in the frequency table to make the frequencies available for use by any Part 94 Eligible, RM–5362; Amendment of Part 2 and §§ 94.63(d)(5) and 94.65(a)(1) footnote 3 of the rules to permit operation of mobile remote meter reading systems on a primary basis on the exclusive power radio service frequencies in the 952.3625–952.8375 MHz Band, RM–5178; Amendment of Part 94 of the rules to permit intrasystem communications among multiple address system master stations, RM–5383.

On March 14, 1988, the Commission released a Report and Order (FCC 88–68, 53 FR 11855 April 11, 1988) in the above captioned proceeding. This document makes corrections to Appendix B as shown below.

1. On page 11858, in the first column, the last sentence of the introductory text in § 94.65(a)(1) the grandfathering date for 25 kHz channels is hereby changed to May 11, 1988.

2. In § 94.73(a) the Table is amended by revising footnotes [1] and [3] to read as follows:

(a) * * *

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–12835 Filed 6–7–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 71147–8002]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of closure.

SUMMARY: NOAA announces prohibitions on deliveries to foreign processors in the exclusive economic zone (EEZ) of yellowfin sole taken in directed fisheries in the Bering Sea and Aleutian Islands Area. This action is taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), and is necessary to limit joint venture processing (JVP) to the amount of yellowfin sole specified for JVP. It is intended to assure optimum use of groundfish and promote the orderly conduct of the groundfish fisheries.

DATES: This closure is effective from 2359 GMT, June 3, 1988, through December 31, 1988. Comments will be accepted through June 20, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patricia A. Peacock (Resource Management Specialist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council and is implemented by rules appearing at 50 CFR 611.93 and Part 675.

In 1988, the initial JVP apportionment (53 FR 894, January 14, 1988) for yellowfin sole in the Bering Sea and Aleutian Islands Area was 189,544 metric tons (mt). An 8,000-mt reapportionment from the reserve (53 FR 12772, April 19, 1988) increased the total JVP apportionment to 197,544 mt. NMFS estimates that 195,044 mt of yellowfin sole will be taken by June 3, 1988. The Regional Director has determined that the remaining amount, 2,500 mt, of the yellowfin sole TAC apportioned to JVP, is needed for bycatch in other directed fisheries delivering to foreign processors in the U.S. EEZ during the remainder of the fishing year. Consequently, NOAA is prohibiting the delivery to foreign processors in the EEZ of any yellowfin sole taken in a directed fishery. Foreign processors in the EEZ may not receive yellowfin sole taken in a directed fishery.

Under § 675.20(a)(7), when the Regional Director determines that an unharvested amount of a target species is necessary for bycatch in fisheries for other groundfish species, the Secretary of Commerce will publish a notice in the **Federal Register** prohibiting directed fishing for that target species for the remainder of 1988. Directed fishing is defined in § 675.2.

Based on the Regional Director's estimate that joint ventures targeting on species other than yellowfin sole will require a bycatch of 2,500 mt of yellowfin sole, the amount of yellowfin sole available to foreign processors receiving directed catches of yellowfin sole is 195,044. To avoid exceeding the JVP for yellowfin sole, U.S. fishermen delivering catches to foreign processors in the EEZ must cease directed fishing for yellowfin sole at 2359 GMT June 3, 1988.

Under § 675.20(g)(2), interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

Classification

The Assistant Administrator for Fisheries, NOAA finds for good cause that it is impractical and contrary to the public interest to provide prior notice and opportunity for public comment. Immediate effectiveness of this notice is necessary to prevent the available quota of JVP for yellowfin sole from being exceeded. This action is taken under the authority of § 675.20(b) and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: June 3, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management.

[FR Doc. 88–12920 Filed 6–3–88; 5:04 pm]

BILLING CODE 3510–22–M

[1] For multiple address operations see § 94.65(a)(1)(iv).

[3] For multiple address operations see § 94.65(a)(1)(iv). When an omnidirectional transmitting antenna is authorized in the 2150–2160 MHz band, the maximum power shall be 60dBm.

Proposed Rules

Federal Register
Vol. 53, No. 110
Wednesday, June 8, 1988

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 33; Doc. No. 5638S]

General Crop Insurance Regulations; Wheat Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by amending the Wheat Endorsement, 7 CFR 401.101, to clarify the quality adjustment of what in relation to the U.S. Grain Standards (7 CFR 810.2201 *et seq.*).

DATES: *Comment date:* Written comments, data, and opinions on this proposed rule must be received not later than July 8, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250.

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 constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, 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.

On Thursday, July 30, 1987, FCIC published a final rule in the **Federal Register** at 52 FR 28443, to provide the General Crop Insurance Regulations (7 CFR Part 401) and various crop endorsements including the Wheat Endorsement (7 CFR 401.101), found at 52 FR 28452.

Upon review of these regulations, FCIC determined that the test weight used for quality adjustment was not in accordance with the U.S. Grain Standards as was intended. The section currently provides that, a test weight of 53 pounds per bushel will be used as criteria to determine the adjustment without reference to wheat class. To conform to the U.S. Grain Standards, the test weight by class of wheat insured should be used.

For this reason, FCIC proposes to amend the Claim for Indemnity section of the Wheat endorsement to incorporate, by reference, the U.S. Grain Standards as to those factors which are relevant to the insured's claim.

This proposed rule is designed to become effective beginning with all wheat planted in the spring of 1989.

It is the intention of FCIC to file this rule as a final rule by the next appropriate filing date of December 31, 1988, for those counties with an April 15 cancellation date, as provided in section 9 of the Wheat Endorsement. However, this action will have the effect of not providing appropriate provisions for test weight by class for those insured who produce fall planted 1989 wheat.

For this reason, and in order to provide an equitable determination for insureds producing both spring and fall planted wheat, FCIC intends to administratively consider claims for indemnity submitted by fall planted wheat insureds on the same basis as outlined in this rule.

FCIC invites public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments should be sent to Peter F. Cole, Federal Crop Insurance Corporation, Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250.

All written comments received pursuant to this rule will be available for public inspection and copying at the above address during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations; Wheat endorsement.

Proposed 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 proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), by amending the Wheat Endorsement (7 CFR 401.101), proposed to be effective for the 1989 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. In the Wheat Endorsement in § 401.101, the introductory text of

paragraph 7.b.(2) is revised to read as follows:

§ 401.101 Wheat endorsement.

* * * * *

7. Claim for Indemnity.

b. * * *

(2) Mature wheat production, which due to insurable causes, grades U.S. No. 5 or Sample Grade because of test weight, total damage, or shrunken and broken kernels, or which grades garlicky, smutty, or ergoty, (all as graded by a grain grader licensed by the Federal Grain Inspection Service or a licensed grader under the United States Warehouse Act) will be adjusted by:

* * * * *

Done in Washington, DC, on May 12, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-12696 Filed 6-7-88; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-88-015]

Pork Promotion, Research, and Consumer Information Program; Procedures for Conduct of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Pork Promotion, Research, and Consumer Information Order was implemented September 5, 1986, as authorized by the Pork Promotion, Research, and Consumer Information Act of 1985. The Act requires that the Secretary conduct a referendum among eligible pork producers and importers of porcine animals, pork, and pork products between 24 months and 30 months after the issuance date of an Order to determine whether the Order should be continued. Accordingly, the referendum must be held on or after September 5, 1988, but not later than March 5, 1989. It is proposed that the representative period for the referendum will be the period from November 1, 1986, to September 6, 1988. Registration for and voting in the referendum will occur on September 7 and 8, 1988. This proposed rule sets forth the procedures for conducting the required initial referendum.

DATE: Written comments, data and opinions on the proposed rule must be received by June 23, 1988, to be sure of consideration.

ADDRESS: Send two copies of comments to Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS), USDA, Room 2610-So., P.O. Box 96456, Washington, DC 20090-6456.

Comments will be available for public inspection during regular business hours at the above office in Room 2610 South Agriculture Building, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch (202) 447-2650.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation No. 1512-1 and has been classified as a non-major rule under the criteria contained therein.

This action has also been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This proposed rule would establish procedures for the conduct of a referendum to determine whether the Pork Promotion, Research, and Consumer Information Order should be continued. It permits all eligible pork producers and importers of porcine animals, pork, and pork products to register and to vote. Participation in the referendum is voluntary. Votes may be cast by mail or in person at county offices of the Extension Service. The Administrator of the Agricultural Marketing Service (AMS) has determined that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis was not prepared.

The Pork Promotion, Research, and Consumer Information Act of 1985 (Act) (7 U.S.C. 4801 *et seq.*) provides for the establishment of a coordinated program of promotion and research designed to strengthen the pork industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for pork and pork products. The program is financed by an assessment of 0.25 percent of the market value of domestic porcine animals and an equivalent amount on imported porcine animals and imported pork and pork products. Pursuant to the Act, an Order was made effective September 5, 1986, and the collection of assessments began on November 1, 1986.

The Act requires that a referendum be conducted during a period beginning not earlier than 24 months after the issuance of the Order and ending not later than 30 months after the issuance of the Order to determine whether the Order should be continued. The referendum is to be conducted among persons who were producers of porcine animals or importers of porcine animals, pork, or pork products during a representative period specified by the Secretary for the purpose of determining whether the Order should be continued. The Order shall be continued only if it is approved by a majority of persons voting in the referendum. If continuation of the Order is not approved by a majority of those persons voting in the referendum, the Secretary shall terminate collection of assessments under the Order within six months after the Secretary determines that the continuance of the Order is not favored by a majority of those persons voting in the referendum and shall terminate the Order in an orderly manner as soon as practicable after such determination.

The Act specifies that the referendum shall be conducted in such manner as prescribed by the Secretary.

The proposed rule sets forth procedures to be followed in conducting the referendum. The proposed rule includes provisions concerning definitions, supervision of the referendum, registration, voting procedures, reporting the referendum results, and disposition of the ballots and records. It is proposed that the referendum be conducted at county Extension Service offices under the supervision of the county Extension Service agent and that the Agricultural Stabilization and Conservation Service (ASCS) of the Department will assist in the conduct of the referendum by (1) counting ballots, (2) determining the eligibility of challenged voters, and (3) reporting referendum results.

It is proposed that the representative period for the referendum will be the period from November 1, 1986, to September 6, 1988. Registration for and voting in the referendum will occur on September 7 and 8, 1988. Absentee ballots will be available from the State ES office on dates to be determined prior to registration.

These proposed procedures for the conduct of a referendum to determine whether the Pork Promotion, Research, and Consumer Information Order should be continued are similar to the referendum procedures contained in a March 28, 1988, final rule (53 FR 9853) under the Beef Promotion and Research Program. In developing the proposed rule, as with other rules, we have considered recommendations from interested persons, including in this instance, the National Pork Board. We believe that the industry is familiar with the procedures which are proposed. In light of the proposed September 7 and 8,

1988, dates to conduct the referendum, it is essential that a final rule be in place so that all interested persons can be made aware in a timely manner of the referendum procedures as adopted. Accordingly, we believe that a comment period of less than 30 days is appropriate in light of the circumstances described above and that the 15-day comment period will provide adequate time for interested persons to comment on the proposed referendum rules.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Marketing agreements, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that Title 7 of the CFR Part 1230 be amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Add new Subpart E to read as follows:

Subpart E—Procedure for the Conduct of Referendum

Definitions

Sec.

1230.601 Act.
1230.602 Administrator.
1230.603 Agricultural Stabilization and Conservation County Committee.
1230.604 Agricultural Stabilization and Conservation Service.
1230.605 Agricultural Stabilization and Conservation Service County Executive Director.
1230.606 Department.
1230.607 Deputy Administrator.
1230.608 Extension Service.
1230.609 Extension Service Agent.
1230.610 Imported Pork and Pork Products.
1230.611 Importer.
1230.612 Order.
1230.613 Person.
1230.614 Porcine Animal.
1230.615 Pork.
1230.616 Pork Product.
1230.617 Producer.
1230.618 Referendum.
1230.619 Registration period.
1230.620 Representative period.
1230.621 Secretary.
1230.622 State.
1230.623 United States.
1230.624 Voting period.

Referendum

1230.625 General.
1230.626 Supervision of referendum.
1230.627 Eligibility.
1230.628 Time and place of registration and voting.
1230.629 Facilities for registering and voting.
1230.630 Registration form and ballot.
1230.631 Registration and voting procedure.
1230.632 List of registered producers and importers.
1230.633 Challenge of eligibility.
1230.634 Receiving ballots.
1230.635 Canvassing ballots.
1230.636 ASCS county office report.
1230.637 ASCS State office report.
1230.638 Results of the referendum.
1230.639 Disposition of ballots and records.
1230.640 Instructions and forms.

Subpart E—Procedure for the Conduct of Referendum

Definitions

§ 1230.601 Act.

"Act" means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) and any amendments thereto.

§ 1230.602 Administrator.

"Administrator" means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated, the authority to act in the Administrator's stead.

§ 1230.603 Agricultural Stabilization and Conservation County Committee.

"Agricultural Stabilization and Conservation County Committee," also referred to as "ASC county committee" means the group of persons within a county elected to act as the county Agricultural Stabilization and Conservation Committee.

§ 1230.604 Agricultural Stabilization and Conservation Service.

"Agricultural Stabilization and Conservation Service," also referred to as "ASCS" means the Agricultural Stabilization and Conservation Service of the Department.

§ 1230.605 Agricultural Stabilization and Conservation Service County Executive Director.

"Agricultural Stabilization and Conservation Service County Executive Director," also referred to as "ASCS County Executive Director" means the person employed by the ASC county committee to execute the policies of the ASC county committee and be responsible for the day-to-day operation of the ASCS county office, or the person acting in such capacity.

§ 1230.606 Department.

"Department" means the United States Department of Agriculture.

§ 1230.607 Deputy Administrator.

"Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agriculture Stabilization and Conservation Service, U.S. Department of Agriculture.

§ 1230.608 Extension Service.

"Extension Service" also referred to as "ES" means the Extension Service of the Department.

§ 1230.609 Extension Service Agent.

"Extension Service Agent" also referred to as "ES Agent" means an employee of the Extension Service of the Department.

§ 1230.610 Imported Pork and Pork Products.

"Imported Pork and Pork Products" means products which are imported into the United States which the Secretary determines contain a substantial amount of pork, including those products which have been assigned one or more of the tariff or customs numbers identified in regulations issued pursuant to the Order.

§ 1230.611 Importer.

"Importer" means a person who imports porcine animals, pork, or pork products into the United States.

§ 1230.612 Order.

"Order" means the Pork Promotion, Research, and Consumer Information Order.

§ 1230.613 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

§ 1230.614 Porcine Animal.

"Porcine Animal" means a swine, that is raised—

(a) As a feeder pig, that is, a young pig sold to another person to be finished over a period of more than 1 month for slaughtering;

(b) For breeding purposes as seed stock and included in the breeding herd; and

(c) As a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.615 Pork.

"Pork" means the flesh of a porcine animal.

§ 1230.616 Pork Product.

"Pork Product" means an edible product produced or processed in whole or in part from pork.

§ 1230.617 Producer.

"Producer" means a person who produces porcine animals in the United States for sale in commerce and who is subject to assessment.

§ 1230.618 Referendum.

"Referendum" means the referendum to be conducted by the Secretary pursuant to the Act during a period beginning not earlier than 24 months after issuance of the Order and ending not later than 30 months after the issuance of the Order whereby persons who have been producers and importers during a representative period shall be given the opportunity to vote to determine whether the continuance of the Order is favored by a majority of producers and importers voting.

§ 1230.619 Registration period.

"Registration period" means the 2-day period of September 7 and 8, 1988, for registration of producers and importers desiring to vote in a referendum. The registration period shall be the same days as the voting period.

§ 1230.620 Representative period.

"Representative period" means the period November 1, 1986, to September 6, 1988, which is established pursuant to section 1622(a) of the Act.

§ 1230.621 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has been delegated, or may hereafter be delegated, to act in the Secretary's stead.

§ 1230.622. State.

"State" means each of the 50 States.

§ 1230.623 United States.

"United States" means the 50 States and the District of Columbia.

§ 1230.624 Voting period.

"Voting period" means the 2-day period of September 7 and 8, 1988, for voting in a referendum.

Referendum

§ 1230.625 General.

(a) A referendum to determine whether eligible producers and importers favor the continuance of the Order shall be conducted in accordance with this subpart.

(b) The Order shall continue only if the Secretary determines that the Order is approved or favored by a majority of the producers and importers casting valid ballots in a referendum.

(c) The referendum shall be conducted at the county offices of the Extension Service of the Department.

(d) The Agricultural Stabilization and Conservation Service of the Department shall assist in the conduct of the referendum.

§ 1230.626 Supervision of referendum.

The Administrator (AMS) shall be responsible for conducting the referendum in accordance with this subpart.

§ 1230.627 Eligibility.

(a) *Eligibility Producers.* Each person who was a producer during the representative period is entitled to register and vote in the referendum. Each producer shall be entitled to cast only one ballot in the referendum.

(b) *Eligible Importers.* Each person who was an importer during the representative period is entitled to register and vote in the referendum. Each importer shall be entitled to cast only one ballot in the referendum.

(c) *Proxy registration and voting.* Proxy registration and voting is not authorized except that an officer or employee of a corporate producer or corporate importer, or any guardian, administrator, executor, or trustee of a producer's or importer's estate, or an authorized representative of any eligible entity (other than an individual producer or importer) such as a corporation or partnership, may register and cast a ballot on behalf of such entity. Any individual registering to vote in the referendum on behalf of any producer or importer corporation, partnership, or other eligible entity shall certify that he or she is authorized by such entity to take such action.

(d) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation, engaged in the production of porcine animals as a producer or in the importation of porcine animals, pork or pork products into the U.S. as an importer shall be entitled to only one vote; provided, however, that any member of a group may register to vote as a producer or importer if he or she is an eligible producer or importer separate from the group.

§ 1230.628 Time and place of registration and voting.

The referendum shall be held for 2 days beginning on September 7, 1988, and ending on September 8, 1988. Eligible persons shall register and vote following the procedures in § 1230.631. Except for absentee ballots, the registration and voting shall take place on September 7 and 8, 1988, at each county ES office during regular office hours.

§ 1230.629 Facilities for registering and voting.

Each county ES office shall provide: (a) Adequate facilities and space to permit producers and importers to register and to mark their ballots in secret and (b) a sealed box or other suitable receptacle for registration forms and ballots which shall be kept under observation during registration and voting hours and secured at all times. Copies of the Order shall be available for review.

§ 1230.630 Registration form and ballot.

A registration form/envelope marked "PARK REFERENDUM" (Form LS–43–1) and ballot (Form LS–43) shall be used for voting in person. The information required on the registration form, which is printed on an envelope, includes name, address, phone number, and voter status (producer or importer). The registration form/envelope also contains a certification statement, referenced in § 1230.631(a)(1). The ballot requires producers and importers to check a "yes" or a "no." A similar registration form and ballot (Form LS–42) shall be used for absentee voting.

§ 1230.631 Registration and voting procedure.

(a) *Registering and voting in person.* (1) Each producer and importer desiring to vote in the referendum shall register on the days of voting at the ES office for the county in which the producer's or importer's residence is located or at the ES office serving the county in which the producer's or importer's residence is located. Producers or importers other than individuals shall register at the ES office in the county in which their headquarters office or business is located or at the ES office serving the county in which the entities' headquarters office or business is located. Producers and importers will be required to list their names on the voter registration list (Form LS–43–2) prior to receiving a registration from and ballot. To register, each producer or importer shall complete the registration form/envelope and certify that they or the entity they represent were producers or importers during the specified representative period and if voting on behalf of an entity referred to in § 1230.627 they are authorized to do so.

(2) Each eligible producer or importer who has not voted by means of an absentee ballot may cast a ballot in person at the location and time set forth in § 1230.628. Eligible persons who enter

their names on the voter registration list (Form LS–43–2) will receive a registration form/envelope (Form LS–43–1), an envlope marked "PORK BALLOT" (LS–42–2), and a ballot (Form LS–43). Voting shall be by secret ballot under the supervision of the local county ES agent or designee. The ballot shall be marked by the voter to indicate "yes" or "no." Voters shall place their marked ballots in the envelope marked "PORK BALLOT", seal it and place it in the completed and signed registration form/envelope marked "PORK REFERENDUM", seal that envelope and personally place it in a box marked "Ballot Box" or other designated receptacle.

(b) *Absentee voting.* (1) Eligible producers or importers unable to vote in person may request and obtain a combined absentee registration form and absentee ballot (Form LS–42) and two envelopes—one marked "PORK BALLOT" (Form LS–42–2) and the other marked "PORK REFERENDUM" (Form LS–42–1) by mail from the State ES office of the State in which they reside if individuals, or where their headquarters office or business is located, if a corporation or other entity. To facilitate mailing of absentee ballots the "PORK REFERENDUM" envelope will be preaddressed with the address of the appropriate county ES office if:

(1) The person or other entity referred to in § 1230.627 requesting the absentee ballot includes in the address his or her county of residence or county in which the headquarters office or business is located or

(ii) The county in which the residence, headquarters office, or business is located can be otherwise determined.

Only one absentee registration form and absentee ballot will be provided to each eligible producer or importer. Form LS–42 must be requested in writing and will be available for distribution from State ES offices from August 1, 1988, to August 26, 1988. The State ES office shall enter on the absentee voter request list (Form LS–42–3) the name and address of each person or entity requesting an absentee ballot and the date the Form LS–42 was mailed. A copy of the applicable absentee voter request list (Form LS–42–3) prepared by the State ES office shall be provided to the appropriate county ES agent who shall deliver it to each ASCS county office as provided for in § 1230.635 for absentee voter verification.

(2) To register, eligible producers or importers must complete and sign the registration form (Form LS–42), and certify that they or the entity they represent were producers or importers during the specified representative period and if voting on behalf of an entity referred to in § 1230.627, they are authorized to do so.

(3) A producer or importer, after completing the registration form and marking the ballot, shall remove the ballot portion of Form LS–42 and seal the completed ballot in a separate envelope marked "PORK BALLOT" and place it in a second envelope marked "PORK REFERENDUM" along with the signed registration form. Producers and importers shall print and sign their names on the envelope marked "PORK REFERENDUM" and mail it to the ES office of the county in which they reside or the ES office serving the county in which they reside. In the case of a partnership, corporation, estate, or other entity, the registration form and ballot must be mailed to the ES office in the county in which its headquarters office or business is located or the ES office serving the county in which its headquarters office or business is located.

(4) Absentee ballots must be received in the county ES office by the close of business, September 1, 1988. Absentee ballots received after that date shall be counted as invalid ballots. Upon receiving the "PORK REFERENDUM" envelope containing the registration form and ballot, the county ES agent or designee shall place it, unopened in a secure ballot box. The county ES agent or his designee shall enter the names of absentee voters on the voter registration list (Form LS–43–2).

(5) A person casting an absentee ballot which is not recorded as being received or which is received after the deadline specified in this section may vote in person at the appropriate county ES office on the days of the referendum.

§ 1230.632 List of registered producers and importers.

The voter registration list (Form LS–43–2) shall be available for inspection during the voting period on September 7 and 8, 1988, at the county ES office and on September 12, 1988, at the ASCS county office. At the ASCS county office it shall be posted during regular office hours in a conspicuous public location.

§ 1230.633 Challenge of eligibility.

(a) *Challenge period.* During the days of the referendum, the names of challenged voters may be reported to the ES county agent who will refer them to the ASCS county office. After that, the names of challenged voters shall be referred directly to the ASCS county office. A challenge of a person's eligibility to vote may be made no later than the close of business on September 12, 1988.

(b) *Who may challenge.* A person's eligibility to vote may be challenged by any person. Any such challenge must be in writing and signed by the person making the challenge.

(c) *Determination of challenges.* The ASC county committee or its representative shall make a determination concerning the eligibility of a producer or importer who has been challenged and notify challenged producers and importers as soon as practicable, but not later than 5 business days after the ending date of the voting period. If the ASC county committee or its representative is unable to determine whether a person was a producer or importer during the representative period, it may require the person to submit records such as sales documents, purchase documents, or other similar documents to prove that the person was a producer or importer during the representative period.

(d) *Challenged ballot.* The registration form/envelopes (Form LS–43–1) containing the ballots cast by producers and importers voting in person whose eligibility is challenged shall be removed from the ballot box and placed in a separate box until the challenge has been resolved. Envelops containing absentee voter registration forms and absentee ballots (Forms LS–42) of challenged absentee voters also shall be removed from the ballot box and placed in the box containing ballots of challenged producers and importers. A challenged ballot shall be determined to have been resolved if the determination of the ASC county committee or its representative is not appealed within the time allowed for appeal or there has been a determination by the ASC county committee after an appeal.

(e) *Appeal.* A person declared to be ineligible to register and vote by the ASC county committee or its representative may file an appeal at the ASCS county office within 3 business days after notification of such decision. Such person may be required to provide documentation such as sales documents or purchase documents in order to demonstrate his or her eligibility. An appeal shall be determined by the ASC county committee as soon as practicable, but in all cases not later than the 9th business day after the ending date of the referendum. The ASC county committee's determination on an appeal is final.

§ 1230.634 Receiving ballots.

A ballot shall be considered to have been received during the voting period if:

(a) It was cast in the county ES office prior to the close of business on September 8, 1988, or

(b) An absentee ballot was received in the county ES office not later than close of business on September 1, 1988.

§ 1230.635 Canvassing ballots.

(a) *Counting the ballots.*

The county ES agent or designee shall deliver:

(i) The sealed ballot box,

(ii) The voter registration list (Form LS–43–2) and

(iii) The absentee voter request list (Form LS–42–3) to the ASCS county office by the close of business on the first business day after the end of the voting period.

ASCS county employees and the county ES agent or designee shall check the registration forms of all voters against the voter registration list (Form LS–43–2) and the absentee voter request list (Form LS–42–3) to determine properly registered voters. The ballots of producers or importers voting in person whose names are not on the voter registration list (Form LS–43–2) shall be declared invalid. Likewise, the ballots of producers or importers voting absentee, whose names are not on the absentee voter request list (Form LS–42–3) shall be declared invalid. Ballots declared invalid and all ballots of challenged voters declared ineligible shall be kept separate from the other ballots and the envelopes containing these ballots shall not be opened.

(2) The valid ballots shall be counted on September 22, 1988. ASCS county office employees shall remove the sealed "PORK BALLOT" envelopes from the registration form/envelopes or absentee ballot envelopes of all eligible voters and all challenged voters determined to be eligible. When removing the "PORK BALLOT" envelopes, steps shall be taken to ensure that the voter's name cannot be identified. After removing all "PORK BALLOT" envelopes, ASCS county employees shall open them and count the ballots. The ballots shall be tabulated as follows:

(i) Number of eligible producers and importers casting valid ballots,

(ii) Number of producers and importers not favoring the Order,

(iii) Number of producers and importers not favoring the order,

(iv) The number of challenged ballots,

(v) The number of challenged ballots deemed ineligible,

(vi) Number of invalid ballots, and

(vii) The number of spoiled ballots.

(b) *Invalid ballots.* Ballots shall be declared invalid if a producer or importer voting in person has failed to sign the voter registration list (Form LS–43–2), or an absentee voter's name is not on the absentee voter request list (Form LS–42–3), or the registration form or ballot was incomplete or incorrectly completed.

(c) *Spoiled ballots.* Ballots shall be considered as spoiled ballots when they are mutilated or marked in such a way that it cannot be determined whether it is a "yes" or a "no" vote. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(d) *Confidentiality.* All ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and tabulation of the votes but may not interfere with the process.

§ 1230.636 ASCS county office report.

The ASCS county office shall notify promptly the ASCS State office of the results of the referendum. Each ASCS county office shall transmit the results of the referendum in its county to the ASCS State office. Such report shall include the information listed in § 1230.635. The results of the referendum in each county may be made available to the public immediately after the ballots have been counted and any necessary verification of accuracy has been completed. A copy of a report of those results shall then be posted for 30 days in the ASCS county office in a conspicuous place accessible to the public, and a copy shall be kept on file in the ASCS county office for a period of at least 12 months.

§ 1230.637 ASCS State office report.

Each ASCS State office shall promptly transmit to the Deputy Administrator a written summary of the results of the referendum received from all the ASCS county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State and be certified by the ASCS State executive director. The ASCS State office shall maintain a copy of the summary where it shall be available for public inspection for a period of not less than 12 months.

§ 1230.638 Results of the referendum.

(a) The Deputy Administrator shall promptly submit to the Administrator the results of the referendum. The Administrator shall promptly prepare and submit to the Secretary a report of the results of the referendum. The results of the referendum shall be issued by the Department in an official press release and published in the **Federal Register**. State reports, and related papers shall be available for public inspection in the office of the Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service, USDA, Room 2610 South Agriculture Building, 14th and Independence Avenue SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of any State or county shall be reexamined and checked by such persons that may be designated by the Deputy Administrator or the Secretary.

§ 1230.639 Disposition of ballots and records.

Each ASCS county executive director shall place in sealed containers marked with the identification of the referendum, the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records shall be placed under lock in a safe place under the custody of the ASCS county executive director for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Deputy Administrator by the end of such time, the records shall be destroyed.

§ 1230.640 Instructions and forms.

The Administrator may prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

Done at Washington, DC, on June 2, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88–12857 Filed 6–7–88; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1930

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to

amend its regulations governing the management and supervision of FmHA Multiple Family Housing Loan and Grant Recipients to incorporate provisions of the Tax Reform Act of 1986. This action is needed by certain applicants and prospective applicants in their decisionmaking regarding loans for Rural Rental Housing (RRH) projects purchased, constructed or rehabilitated after 1986. Such applicants or prospective applicants would expect to derive tax credits from their investment in RRH projects. Also, this action is needed to inform FmHA staff members of their responsibilities with regard to the Tax Reform Act.

The FmHA also proposes to amend the same regulations to establish authorization to transfer unused rental assistance (RA) without a borrower's request but with right of appeal.

DATE: Comments must be submitted on or before August 8, 1988.

ADDRESSES: Send written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agiculture Building, 14th and Independence Avenue, Washington, DC 20250, Telephone: (202) 382–9725. All written comments will be available for public inspection during normal working hours.

FOR FURTHER INFORMATION CONTACT: Ernest W. Harris, Loan Officer, Multiple Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5321–S, Washington, DC 20250, Telephone: (202) 382–1613.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "non-major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Before passage of the Tax Reform Act of 1986, RRH borrowers were able to report operating "losses" on their investment in RRH projects due to accelerated depreciation and mortgage interest paid on such properties. Such "losses" could legitimately be applied against other income for tax purposes. The Tax Reform Act of 1986 replaces this type of incentive with tax credits. Section 515(p) of the Housing Act of 1949, has been amended to reflect the provisions of the Tax Reform Act of 1986. This amendment to the regulation implements the amendment to the Housing Act of 1949 setting forth conditions, regarding renting of the project, under which borrowers may quality for the tax credit without undue penalties caused by FmHA occupancy requirements. This amendment further provides safeguards for higher income tenants who may be displaced by the borrower's election to receive tax credits. Finally, this amendment will not affect projects not receiving tax credit consideration and will not materially affect existing tenant selection criteria.

During the course of administering the rental assistance (RA) program, the FmHA has experienced two concerns. First, there has been limited RA appropriation to meet the total RA need nationwide. Second, the FmHA has observed in some instances that a few projects have not needed or utilized their full RA allotment on a sustained basis. The FmHA proposes to transfer sustained unused portions of RA allocations, as provided for in the rental assistance agreement, Form FmHA 1944–27, to other projects, to fully utilize available unused RA funds. Such decisions would be appealable by the borrower.

This program/activity is listed in the Catalog of Federal Domestic Assistance under numbers 10.405, 10.411 10.415 and 10.427 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.

List of Subjects in 7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs-Housing and Community Development, Loan programs-Housing and Community Development, Low- and Moderate income housing-Rental, Reporting requirements.

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

PART 1930—GENERAL

1. The authority citation for Part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23, 2.70

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Exhibit B to Subpart C is amended by revising paragraph VI. D. 2. e. (1), by redesignating paragraphs VI E and F as paragraphs VI F and G respectively, and by adding a new paragraph VI E to read as follows:

Exhibit B—Multiple Housing Management Handbook

* * * * *

VI. Renting Procedure

* * * * *

D. * * *

2. * * *

e. * * *

(1) The borrower or management agent will request that such prospective tenant provide this information on a voluntary basis to enable monitoring or compliance with Federal laws prohibiting discrimination. When the applicant does not provide this information, the rental agent will complete this item based on personal observation or surname.

* * * * *

E. *Tax Credit Compliance.* The Tax Reform Act of 1986 permits certain (RRH) borrowers to receive tax credits for low-income housing projects if: 20 percent or more of the units are occupied by very low-income tenants, or 40 percent or more of the units are occupied by tenants whose annual adjusted income is 60 percent or less of the area median gross income.

1. Eligible borrowers with projects qualified to receive tax credits will follow the tenant selection criteria of paragraph VI F of this Exhibit except that tenant selection may be postponed until applicants for occupancy are available whose occupancy will allow the borrowers to meet their tax credit requirements.

2. When the District Director (DD) determines that vacancies of at least six months duration exist and that such vacancies threaten the financial viability of the project, the borrower may be required to rent to other eligible applicants.

3. Borrowers requestiong Internal Revenue Service (IRS) tax credits must honor the remaining period of a tenant's lease and, unless material noncompliance or other good cause to terminate occupancy as described in paragraph XIV A of this Exhibit exists, renew the tenant's lease or establish other mutually acceptable housing arrangements.

* * * * *

3. In Exhibit B, paragraph VII D is amended by changing the reference "paragraph VI F of this Exhibit" to read "paragraph VI G of this Exhibit."

4. In Exhibit B–1, paragraph No. 3 is amended by adding a new item h to read as follows:

Exhibit B–1 Management Plan Requirements for FmHA Multiple Family Housing Projects

* * * * *

3. * * *

h. What will the policy be toward higher income tenants when borrowers are concerned with renting to low-income tenants, so as not to jeopardize their tax credits?

* * * * *

5. In Exhibit E, paragraphs XI B 1 b and 2 b are amended by changing the reference "paragraph VI E of Exhibit B" to read "paragraph VI F of Exhibit B."

6. In Exhibit E, paragraph XI B 4 is amended by changing the reference "paragraph VI E 3" to read "paragraph VI F 3."

7. Exhibit E to Subpart C is amended by adding a new paragraph XV B 5 c to read as follows:

* * * * *

XV. Suspending or Transferring Existing Rental Assistance Agreements

B. * * *

5. * * *

c. If, at the end of the initial year of a Rental Assistance Agreement, the borrower has not used a portion of the RA units for an ensuing 12-month period, the State Director may transfer the number of unused units, minus one, to another project. This would apply only if the current contract is on Form FmHA 1944–27 and when:

(1) The borrower has made the efforts described in paragraphs 5a (2) (i), (ii) and (iii) to market the project to tenants needing RA.

(2) The District Director has reviewed the project occupancy list, waiting list, and any other data available and verified that there is no apparent RA need in the project.

(3) The State Director has notified the borrower at least 30 days in advance of FmHA's intent to transfer the RA units and has given the borrower appropriate appeal rights in accordance with Subpart B of Part 1900 of this chapter.

(4) If the borrower appeals the decision, the appeal is resolved in accordance with Subpart B of Part 1900 of this chapter, before any transfer action is taken.

(5) The transfer will be completed in accordance with paragraph XV A 2 of this Exhibit.

* * * * *

Date: May 5, 1988.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 88–12915 Filed 6–7–88; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Reg Y; Docket Number R–0386]

Statement of Policy on Banking Market Extension Mergers and Acquisitions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy Statement; Withdrawal.

SUMMARY: In 1982, the Board of Governors of the Federal Reserve System ("Board") proposed for comment a policy statement setting forth guidelines for analyzing the competitive effects of market extension acquisitions (the "Guidelines"). The Guidelines described the circumstances under which market extension proposals might be subject to intensive examination by the Board or the relevant Federal Reserve Bank before a determination is made regarding competitive effects. Because of the current competitive situation in the financial services industry, the Board has decided not to adopt the Guidelines.

EFFECTIVE DATE: June 2, 1988.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Jr., Deputy General Counsel, (202/452–3430); or Pamela G. Nardolilli, Senior Attorney, Legal Division (202/452–3889); Stephen A. Rhoades, Section Chief, Division of Research and Statistics (202/452–3906). For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), (202/452–3544), Earnestine Hill or Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On February 26, 1982, the Board released for public comment Guidelines that it proposed to use to identify those merger or bank acquisition cases that raised significant issues under the probable future competition doctrine and would require a detailed staff analysis. 47 FR (017 (1982). the proposed Guidelines contained four criteria, all of which would have to be met before intensive analysis of the transaction would be undertaken.

Since the Guidelines were proposed, there have been significant changes in the financial services industry that have affected the usefulness of the Guidelines as a screen to determine those cases that raise probable future competition issues. Since 1980, for example, the powers of thrift institutions have been expanded greatly, and thrifts have increasingly taken advantage of these powers to broaden the range and amount of their services. In addition, during this same period, there has been a marked broadening of geographic expansion opportunities through relaxation of state branching and multi-bank holding company restrictions and interstate banking initiatives. The Board's experience under the Guidelines has been that the combination of these two developments has affected the application of the criteria of the probable future competition doctrine in such a manner that it would be applicable, if at all, in only a very few banking markets.

Although the Board has decided not to adopt the Guidelines, the Board will examine mergers and acquisitions under the probable future competition doctrine in appropriate cases using the standards enunciated by the courts. In addition, the Department of Justice Merger Guidelines provide guidance for analyzing market extension mergers. 49 FR 26823 (1984).

Accordingly, in light of the above, the proposed policy on Market Extension Guidelines is withdrawn, effective June 2, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–12828 Filed 6–7–88; 8:45 am]

BILLING CODE 6210–01–M

12 CFR Part 225

[Docket No. R–0637]

Regulation Y; Limitations on Nonbank Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed rules to implement provisions of the Competitive Equality Banking Act of 1987 ("CEBA") (Pub. L. No. 100–86), relating to so-called nonbank banks. CEBA amended the definition of "bank" in the Bank Holding Company Act ("BHC Act") to include certain banking institutions that had previously been outside that definition (so-called "nonbank banks"). CEBA also contained a grandfather provision that permitted nonbanking companies that controlled nonbank banks as of March 5, 1987, to retain control of the institution and not be treated as a bank holding company for purposes of the BHC Act if the company and its subsidiary nonbank bank observe certain restrictions. These limitations generally restrict nonbank banks from commencing new activities of cross-marketing programs with affiliates after March 5, 1987, increasing their assets at

an annual rate of more than 7 percent during any 12-month period commencing after August 10, 1988, or permitting overdrafts on behalf of affiliates or incurring such overdrafts at a Federal Reserve Bank. 12 U.S.C. 1843(f) (2) and (3).

To implement these limitations, the proposed rules: (1) Define the term "activity"; (2) clarify the scope of the cross-marketing limitation; (3) describe how the 7 percent annual asset growth rate will be computed; and (4) clarify the restriction on overdrafts.

This proposed rulemaking also amends the definition of "bank" in Regulation Y to correspond with the definition set forth in CEBA.

DATE: Comments must be submitted on or before July 18, 1988.

ADDRESSES: Comments, which should refer to Docket No. R–0637, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, Attention: Mr. William Wiles, Secretary; or may be delivered to Boom B–2223 between 9:00 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file, and may be inspected at Room B–1122 between 9:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: For information regarding §§ 225.2, 225.51, 225.52 and 225.145, contact J. Virgil Mattingly, Deputy General Counsel (202/452–3430) or Robert D. Frierson, Attorney (202/452–3711); for information regarding § 225.53, contact Oliver I. Ireland, Associate General Counsel (202/452–3625), or Elaine M. Boutilier, Senior Attorney (202/452–2418), Legal Division, Board of Governors of the Federal Reserve System; or for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: CEBA amended the Bank Holding Company Act of 1956 ("BHC Act") by expanding the definition of "bank" to include any bank the deposits of which are insured by the Federal Deposit Insurance Corporation as well as any other institution that accepts demand deposits or accounts with third party payment capabilities and is engaged in the business of making commercial loans. This new definition covers certain institutions that had not previously been covered by the BHC Act ("nonbank banks") and prevents banking and nonbanking companies from forming new nonbank banks.

CEBA also contains a grandfather provision that permits a nonbanking company that controlled a nonbank bank on March 5, 1987, to retain the nonbank bank and not be treated as a bank holding company if the company and its subsidiary nonbank bank observe certain limitations designed to prevent unfair competition with banks owned by bank holding companies and to reduce risks posed to the payments system by nonbank banks. With certain limited exceptions, the grandfathered parent company may not acquire more than 5 percent of the assets or shares of any additional bank or thrift institution after March 5, 1987, and the grandfathered nonbank bank may not—

(1) engage in any activity after March 5, 1987, unless it was lawfully engaged in that activity as of March 5, 1987;

(2) offer or market products or services of an affiliate that are not permissible for bank holding companies under the BHC Act or permit its products or services to be offered or marketed by an affiliate engaged in activities not permissible for bank holding companies under the BHC Act, unless the specific cross-marketing activity was conducted as of March 5, 1987, and then only in the same manner as conducted as of that date;

(3) permit an overdraft (including intraday overdrafts) by an affiliate, or incur an overdraft in its account at a Federal Reserve Bank on behalf of an affiliate; and

(4) increase its assets at an annual rate of more than 7 percent during any 12-month period beginning August 10, 1988.[1]

A grandfathered company must divest its nonbank bank within 180 days if the company or nonbank bank fails to comply with any of these limitations. 12 U.S.C. 1843(f)(4).

On August 21, 1987, the Board issued a Statement of Guidance ("Statement") to assist affected companies in complying with CEBA's requirement to report to the Board within 60 days of the statute's enactment regarding their ownership of a nonbank bank. Many of the companies filing these reports raised several questions as to the meaning of CEBA's limitations as they apply to the activities, cross-marketing programs, growth rate and overdrafts of grandfathered nonbank banks and asked the Board to initiate a rulemaking proceeding to implement these limitations. Accordingly, the Board is requesting comment on the following proposed rules that address the issues and questions raised regarding CEBA's limitations on nonbank banks.

1. *Activity limitation.* As noted, CEBA restricts a nonbank bank to those activities in which it was lawfully engaged as of March 5, 1987. A number of companies have asked for guidance on the meaning of the term "activity". In light of the comments and data received and a careful review of the legislative history, the Board believes the term denotes any discrete line of banking or nonbanking business. In applying the definition of activity, the proposed rule focuses on five major categories of activities: deposits, loans, trust services, payment and clearing services, and nonbanking activities.

Deposit Activities. The proposed rule provides that the following deposit-taking activities constitute separate lines of activity for purposes of CEBA: (1) Demand deposits; (2) non-demand deposits from which third-party payments may be made generally; and (3) time or savings deposits. Thus, a nonbank bank that offered only time and savings deposits on March 5 could not begin to offer demand deposits.

Some reporting comanies have commented to the Board that the activity limitation in CEBA intended no distinction between insured demand deposits and other types of deposits if they are also insured. As explained in the interpretive rule, this position is contrary to the express terms of the statute as well as its legislative history. Under the BHC Act, a nonbank bank that refrained from offering demand deposits to avoid being a "bank" before CEBA could not begin to accept demand deposits after enactment of CEBA, because if it had accepted demand deposits on March 5, 1987, it would have been a bank in violation of the BHC Act. As noted, under CEBA a nonbank bank is limited to those activities in which it was *lawfully* engaged on March 5. The interpretation urged by those commenters would permit nonbank banks to convert themselves into full service banks by offering both demand deposits and commercial loans, a reuslt the Senate debates and Conference Report clearly state would not be permitted under the activity limitations.[2]

Lending Activities. For the same reasons a nonbank bank that makes commercial loans cannot accept demand deposits, a nonbank bank that accepts demand deposits but refrained form making commercial loans to avoid coverage under the BHC Act before CEBA, as most of the nonbank banks did, would not be permitted to begin to make commercial loans after CEBA. Such a nonbank bank could not have lawfully made commercial loans prior to CEBA and, therefore, cannot begin to make them after CEBA. The rule would define commercial loan consistent with the Report of Condition and the

[1] 12 U.S.C. 1843(f) (2) and (3).

[2] Comments of Senator Proxmire (floor manager), 133 Cong. Rec. S4054 (March 27, 1987); H. Rep. No. 100–261 100th Cong., 1st Sess. 124–25 (1987).

Supreme Court's decision, to include any loan to a business as well as loans to individuals for business purposes.

The proposed rule delineates three lines of consumer lending activity for purposes of CEBA: consumer lending, loans secured by the borrower's home, and credit card lending activities. As explained in the interpretive rule, this distinction draws upon the Board's bank holding company regulation by analogy. 12 CFR 225.25(b)(1). That regulation as well as the bank Report of Condition treat these types of lending as distinct lines of activity. Under the proposed rule, home equity loans would be treated as a loan secured by the borrower's residence and not as a consumer loan.

The proposed rule provides two additional categories of loans: loans to depository institutions and to state and local governments (but not including the purchase of their securities). To address questions raised by reporting companies, the proposed rule also defines the terms "engaged in" and "as of March 5, 1987" as used in the activity limitation.

Trust Activities. The proposed rule defines trust activities, in accordance with prior Board practice, as falling within the following three categories which provide properly separate activities: (1) Trustee, executor, or administrator for personal trusts and estates; (2) Trustee, investment advisor or investment manager for employee benefit plans; and (3) Corporate trust services, including acting as transfer, paying or fiscal agent.

Clearing and Payment Services. Clearing and payment services reflect a depository institution's orientation toward either consumers or commercial entities. The proposed rule treats the following payment-related services as discrete activities: (1) Transaction services for consumer accounts; (2) transaction services for business accounts; (3) clearing or custody of securities; (4) acting as a correspondent bank for other depository institutions; and (5) acting as a broker or dealer in government securities.

Nonbanking Activities. Finally, consistent with the normal meaning given to the term "activity" under the BHC Act, the proposed rule treats any separate line of nonbanking business as an activity. The proposed rule refers to the list of permissible nonbanking activities under the Board's Regulation Y as examples of separate lines of business activity. That regulation sets out 24 permissible nonbanking activities in broad categories (*e.g.*, data processing, discount securities brokerage, investment advisory services, leasing, management consulting, and foreign exchange activities). 12 CFR 225.25(b). The Board's rules also list other activities that are not permissible but in which some banks engage under state law (*e.g.*, real estate development, real estate brokerage, and real estate syndication). 12 CFR 225.126. The proposed rule points out that a nonbank bank engaged on the grandfather date in one aspect of a nonbanking activity (*e.g.*, leasing airplanes) could lease any type of product (*e.g.*, railroad cars).

2. *Cross-Marketing.* CEBA's second limitation prohibits a grandfathered nonbank bank from engaging in certain cross-marketing activities with an affiliate unless it was so engaged on the March 5, 1987, grandfather date. Unlike the activity limitation, which applies to separate lines of business, the cross-marketing limitation applies product-by-product and service-by-service. Thus, under the statute, nonbank bank may not offer or market the products or services of an affiliate unless the product or service is one that a bank holding company may offer, or allow one of its products or services to be offered or marketed by an affiliate engaged in activities not permissible for a bank holding company. There is an exception for products or services offered or marketed on the grandfather date, but only "in the same manner in which they were being offered or marketed as of that date." To implement this exception, the proposed rule provides that the means of offering or marketing the product or service must remain the same as of the grandfather date. For example, an affiliate not using direct mailings as a marketing technique as of the grandfather date for a particular product or service of a nonbank bank may not commence this type of marketing after the grandfather date. The Board is seeking comment on the effect that this interpretation would have on institutions conducting activities under the cross-marketing exception.

The proposed interpretive rule, which will appear as 225.145, describes the types of permissible cross-marketing permitted by CEBA. The rule also points out that the cross-marketing limitation would not prohibit an affiliate of a nonbank bank that was marketing the bank's boat loans from continuing to market that type of loan product or from changing the specific terms and conditions of the loan. The affiliate could not, however, begin to offer or market another product or service of the bank, such as a deposit account, trust service, or a different loan product.

The proposed rule also clarifies the scope of the grandfather exception to the cross-marketing provision and defines the terms "offer or market" and "as of March 5, 1987" used in that provision.

3. *Seven Percent Annual Asset Growth Limitation.* As noted, a nonbankbank's asset growth under CEBA is limited to an annual rate of 7 percent during any twelve-month period, beginning one year after the date of enactment of CEBA, that is, beginning after August 10, 1988. A number of reporting companies raised questions about the application of this limitation.

In the Statement, the Board indicated that it would use the average asset data from call reports in determining compliance with this limitation in order to minimize regulatory and reporting burden.[3] The question has arisen, however, as to how the total assets of the institution will be determined on August 10, 1988, the initial base date for applying the limitation. The terms and legislative history of CEBA indicate that during the one year period between August 10, 1987 (the date of enactment of CEBA) and August 10, 1988, the 7 percent growth rate would not be applicable. Accordingly, the proposed rule provides that the growth rate will apply only to periods commencing on or after August 10, 1988.

The proposed rule provides two methods to determine the initial base for computing the growth rate. First, because, as discussed below, the proposed rule seeks to monitor compliance with the growth limit on a quarterly basis using the call reports, the rule provides that the institution may choose to use the average total assets reported on the call report for the quarter ending September 30, 1988, as the initial base for measuing compliance, instead of its actual total assets on August 10, 1988. Use of the average asset figure for the third quarter would avoid additional reports and monitoring problems arising as a result of the growth rate limitation becoming effective in the middle of a reporting quarter.

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[3] The Conference Report on CEBA directs the Board "in determining compliance with the 7 percent growth rate, to utilize a procedure which computes the grandfathered institution's growth rate on an average basis." H. Rep. No. 100-261, 100th Cong. 1st Sess. 125 (1987).

Banking institutions with $100 million in assets or more must file with their reports of condition their average total assets over the quarter calculated either on a daily basis or a weekly basis (*i.e.*, an average of the Wednesday of each week of the quarter). Institutions with less than $100 million may report using an average of four month-end figures.

The Board also seeks comment on an alternative which would permit the institution, if it chooses to use the total assets reported on its books on August 10, 1988, as its initial base figure. If the nonbank wishes to use this figure, the proposed rule requires it to report to the Board this amount by September 30, 1988, in order that the Board may monitor compliance with the growth limitation. Under this alternative, compliance with the growth rate for then initial 12-month period (August 10, 1988 to August 9, 1989) will be measured by comparing the bank's average total assets for the third quarter of 1989 with the bank's total assets on August 10, 1988.[4]

Under CEBA, the 7 percent annual growth rate is applied "during any 12-month period" after August 10, 1988. The proposed rule would provide that the growth rate would be applied on a rolling 12-month basis, commencing for those institutions electing to use the average assets for the third quarter of 1988 for the initial base, with the end of the third quarter of 1988 (September 30, 1988). The initial 12-month period for these institutions would expire with the close of the third quarter of 1989 (September 30, 1989). Compliance with the growth rate over this initial 12-month period will be measured by comparing the average total assets reported for the third quarter 1989 with the average total assets reported for the third quarter in the preceding year (*i.e.*, the 3rd quarter 1988).[5] After this initial 12-month period, compliance would be measured for all nonbank banks quarterly by comparing the average total assets from the call report for each quarter after the 3rd quarter 1989 (*i.e.*, the 4th quarter 1989 *et seq.*) with the average total assets for the same quarter in the preceding year (*i.e.*, 4th quarter 1988 *et seq.*). The quarterly monitoring would assure that distortions resulting from seasonal fluctuations in asset growth during the year or window-dressing transactions would be avoided.

4. *Overdrafts.* The fourth limitation on nonbank banks prohibits a nonbank bank from permitting an overdraft for an affiliate and from incurring an overdraft in its account with a Federal Reserve Bank on behalf of an affiliate.[6] All overdrafts by affiliates in their accounts at nonbank banks are prohibited by the statute.[7] To implement the statutory language prohibiting overdrafts on behalf of affiliates by nonbank banks at Federal Reserve Banks, the proposed rule provides that an overdraft by a nonbank bank in the nonbank bank's account at a Federal Reserve Bank shall be deemed to be on behalf of an affiliate whenever: (1) A nonbank bank holds an account for an affiliate from which third party payments can be made; and (2) the aggregate balance of all of an affiliate's accounts with the nonbank bank is less, at the time the nonbank bank incurred an overdraft in its account at a Federal Reserve Bank, than the aggregate balance of all of the affiliate's accounts maintained by the nonbank bank at the opening of business on the day on which the nonbank bank incurred the overdraft.

This proposed rule would define "on behalf of an affiliate" based on activity in the affiliate's accounts at the nonbank bank. Whenever an affiliate draws down or has drawn down the aggregate balance of all its accounts at the nonbank bank during the same time period that the nonbank bank incurs an overdraft at its Reserve Bank, the overdraft will be deemed to be "on behalf of the affiliate." A transfer between an affiliate's accounts at the nonbank bank would not affect the aggregate balance in the affiliate's accounts. The affiliate would not necessarily have to overdraw an account with the nonbank bank for an overdraft at the Reserve Bank to be deemed to be on its behalf; rather, the debits posted to the aggregate of its accounts at the nonbank bank would only have to exceed the credits posted to the aggregate of its accounts on the day of the overdraft prior to or during the time that the overdraft occurred. This proposed rule presumes that any drawdown by an affiliate when the nonbank bank is overdrawn with the Federal Reserve has contributed to the overdraft in the nonbank bank's account at its Reserve Bank, and therefore the overdraft at the Reserve Bank is considered "on behalf of the affiliate." To facilitate administration of this rule, nonbank banks would be required to report to their Reserve Bank accounts held for affiliates from which third party payments could be made.

In addition to the CEBA overdraft restrictions, the Board is considering imposing a zero "cap" for purposes of the Board's general risk reduction program on all nonbank banks that offer to their affiliates accounts with third party payment capabilities. Under the risk reduction program overdrafts in excess of the zero cap would result in counseling by the Reserve Bank or other action as described in the Board's "Policy Statement Regarding Risks on Larger-Dollar Wire Transfer Systems," 50 FR 21,120 (May 22, 1985), rather than divestiture under CEBA. The Board requests comments on the imposition of the zero cap.

Posting. Posting is the procedure whereby the debit or credit adjustments resulting from payments transactions are made to the appropriate account. In order for nonbanks banks to avoid overdrafts at Reserve Banks, they must know when entries will be posted to their accounts. Similarly, posting rules are necessary to determine whether an overdraft has occurred at a nonbank bank. Without posting rules, nonbank banks could evade the purpose of the statute by posting entries at such times of the day as to mask overdrafts. Accordingly, the Board is proposing posting rules for nonbank banks' Federal Reserve accounts and affiliates' accounts at nonbank banks.

These rules are designed solely to control risk in accordance with CEBA. They do not apply to depository institutions not covered by CEBA and are in addition to rules applicable to depository institutions' accounts at Federal Reserve Banks under the Board's general risk reduction policy. These rules differ from those incorporated in the Board's risk reduction policy because they focus solely on loss exposure and do not consider manipulation of cap capacity or other factors that are considered under the general risk reduction policy.

Posting by Federal Reserve Banks. Under the proposed rules, Reserve Banks will post funds and book-entry securities transfers as they are made.

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[4] Use of the average total assets for the third quarter 1989 should very closely approximate total assets on August 10, 1989, which date falls very near the center of the third quarter.

[5] For those institutions using the actual August 10, 1988 figure, the initial 12-month period would commence on August 10, 1988 and expire on August 9, 1989. Thereafter, compliance with the growth rate would be measured over the same 12-month periods applicable to institutions that chose to use the 3rd quarter of 1988 as their initial base. For example, for those institutions using the actual August 10, 1989 figure, the second 12-month period would compare average total assets for the fourth quarter of 1989 with the average total assets for the 4th quarter of 1988.

[6] CEBA excludes certain industrial banks from the definition of "bank" in the BHC Act. This exemption is lost, however, if the industrial bank violates the overdraft restriction. The following discussion regarding nonbank banks also applies to industrial banks with the exception of the primary dealer exemption which does not apply to industrial banks.

[7] This overdraft prohibition does not prevent nonbank banks from making loans to affiliates consistent with other laws, *e.g.*, sections 23A and 23B of the Federal Reserve Act, applicable bank lending limits, and CEBA's restriction on new activities. A nonbank bank that was not making commercial loans prior to March 5, 1987, would violate the new activity restrictions of CEBA by making loans to affiliates after that date. Where a debit is posted to an account, overdraws the account, and is not covered by a loan at that time, it is an overdraft and not a loan.

For check, ACH, and noncash transactions, net settlement entries, and nonelectronic transactions, all credits will be posted as of the opening of business and all debits at the close of business.

With regard to discount window loans, the Board proposes to post credits for discount window loans as of the close of business on the day the loan is made, and to post debits for repayment of loans as of the close of business at the maturity of the loan.

This procedure differs from the posting rules used by the Board's ex post monitoring system under the risk reduction program. Although the ex post monitor method used in the risk reduction program is familiar to depository institutions, the Board believes that it is inappropriate to apply its posting rules to nonbank banks for the purposes of applying the CEBA overdraft restrictions. The ex post monitor posting rules were developed for a voluntary program which does not involve the serious divestiture (or loss of exemption, in the case of industrial banks) consequences that result from an overdraft under CEBA. In some cases, such as overdrafts due to certain ACH debits, divestiture based on the ex post monitor posting rules may be inequitable. The Board is continuing to review the ex post monitor in light of this and other issues, but the posting rules adopted for purposes of CEBA monitoring should not be considered a precedent for any revisions to the ex post monitor.

In addition to the posting rules, Reserve Banks will pay particular attention to depository transfer checks and ACH cash concentration debits used by affiliates of nonbank banks. These transactions are likely to present risks that are not addressed by the proposed posting rules. For example, where an affiliate of a nonbank bank deposits depository transfer checks with a nonbank bank in order to transfer funds to its account at the nonbank bank from its account at another depository institution, it is likely that the check will be returned in the event of failure of the affiliate. Failure of the affiliate, in turn, may precipitate failure of the nonbank bank. The returned check will come back to the Federal Reserve after the day when the credits for these transactions are posted to a nonbank bank's account, and therefore the risks presented by these returns are not addressed by posting rules. Consequently, where appropriate to protect against risk of return of these transactions, nonbank banks may be required to establish a special clearing balance at their Reserve Bank to be maintained at all times at a sufficient level to protect against these risks.

Posting by Grandfathered Banks. Because depository institutions' rights with respect to their customers differ from the rights that a Reserve Bank has with respect to transactions that it processes, particularly in the area of check and ACH transactions, the posting rules do not require nonbank banks to post all transactions for CEBA monitoring purposes at the same time that the transactions are posted by Reserve Banks. The Board proposes to permit nonbank banks to post checks and ACH transfers at any time during the day of the transaction—*i.e.*, settlement day for ACH transactions or the day of presentment or credit to the nonbank bank for check transactions—so long as debits are posted no later than the time that the nonbank bank's account at the Reserve Bank is debited for the transaction for purposes of CEBA overdraft monitoring, and credits are posted no earlier than the time when the credit for the transaction is posted to the nonbank bank's account for the purposes of CEBA overdraft monitoring. Accordingly, nonbank banks may keep two sets of books for posting: one for affiliates and another for the rest of its customers. No posting to an affiliate's account is necessary if a nonbank bank returns a check or an ACH debit transfer in accordance with applicable law.

Exemptions. CEBA provides two exemptions from the restriction on overdrafts. One exemption is for overdrafts on behalf of an affiliate that is a primary dealer, where the overdraft is fully secured; [8] and the other exemption is for inadvertent computer or inadvertent accounting errors that are beyond the control of both the grandfathered bank and the affiliate.

Primary Dealers. CEBA defines a primary dealer as one that is recognized as a primary dealer by the Federal Reserve Bank of New York. Currently, there are 42 such primary dealers, but only eight are affiliated with nonbank banks. Some of these eight primary dealers do not currently clear book-entry securities transfers through their nonbank banks.

CEBA does not prohibit primary dealers from incurring overdrafts at affiliated nonbank banks and the affiliated nonbank banks from incurring overdrafts at their Federal Reseve Bank on behalf of the primary dealer affiliate, provided that these overdrafts are fully secured, "as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve Book entry system." [9] The proposed regulation defines "fully secured" as secured by a fully perfected security interest in specific, identified obligations listed in the statute with a market value that, in the Reserve Bank's judgment, is sufficiently in excess of the amount of the overdraft to provide a margin of protection against a volatile market or the chance that the securities would need to be liquidated quickly.

The Board is considering establishing a cap or ceiling on the level of securities-related overdrafts to be permitted by any one nonbank bank. Such a cap would be set through self-evaluation procedures similar to those used in the risk reduction program, and nonbank banks exceeding the cap would be counseled or subject to other action by their Federal Reserve Bank, in accordance with the Board's risk reduction policy. The Board requests comment on the appropriateness of establishing such a cap. Although CEBA exempts secured primary dealer overdrafts from the overdraft restrictions, the legislative history of DEBA clearly indicates that Congress was not confering a right to overdrafts at the Federal Reserve on primary dealers. Nonbank banks affiliated with primary dealers may have limited abilities to fund themselves in the markets and therefore may place undue reliance on access to the discount window or otherwise unnecessary requests for extensions of Fedwire to complete deliveries of inventories of securities that it is not able to fund overnight.

Inadvertent Errors. CEBA also exempts from the overdraft restrictions those overdrafts resulting from inadvertent computer or inadvertent accounting errors that are beyond the control of both the nonbank and the affiliate. The proposed regulation defines such inadvertent errors as those resulting in an overdraft that was not reasonably foreseeable or preventable by the nonbank bank or the affiliate. A misposting of an entry by a Reserve Bank would not result in an overdraft in a nonbank's account because no extension of credit had been made. Similarly, a misposting of an entry by a

[8] This exemption does not aply to industrial banks.

[9] An overdraft is on behalf of a primary dealer affiliate only to the extent that the primary dealer has drawn down its accounts at the nonbank bank on that day.

nonbank bank to an affiliate's account would not result in an overdraft.

Inadvertent computer errors would include problems where a nonbank bank or affiliate could not avoid book-entry securities overdrafts from inbound securities transfers, because it could not originate off-setting outbound transfers of securities or where a nonbank bank received a book-entry securities transaction sent to it in error. On the other hand, if a Federal Reserve Bank's computer should go down so as to prevent a Fedwire funds transfer from being sent to the nonbank bank, any overdraft due to outbound Fedwire funds transfers would be within the control of the nonbank bank, because the nonbank bank could have waited until it had sufficient funds in its account to cover the outbound transfer.

5. *Other Issues:* Four nonbank banks that had not commenced business as of the date of enactment of CEBA filed reports with the Board claiming grandfather rights under CEBA. The proposed rule states that these institutions do not qualify for grandfather rights under the terms of CEBA.

In order to be entitled to grandfather rights under CEBA, the nonbank bank must have become a bank as a result of enactment of CEBA and may only engage in activities in which it was engaged on March 5, 1987. An institution that was not FDIC-insured and did not accept demand deposits or make commercial loans on the March 5 grandfather date or on August 10, 1987, the date of enactment of CEBA, would not have become a bank as a result of enactment of CEBA. Thus, it would not be entitled to grandfather rights. Indeed, even if the nonbank bank somehow were entitled to grandfather rights, its activities would be limited to those in which it was lawfully engaged on March 5. On that date, the four nonbank banks had not commenced operations and therefore were not engaged in any activities. Thus, they could not thereafter commence any activities without loss of their grandfather privileges.

Finally, the rule notes that under the terms of CEBA, a company that controls a nonbank bank would lose its grandfather status if it or the subsidiary bank acquires an additional bank or thrift or violates the activity limitations in CEBA.

Initial Regulatory Flexibility Act Analysis

Of the items required to be obtained in an initial regulatory flexibility analysis by 5 U.S.C. 603(b), the first ("a description of the reasons why action by the agency is being considered") and the second ("a succinct statement of the objectives of, and legal basis for, the proposed rule") are found elsewhere in this preamble.

The proposed rule contains reporting and record-keeping requirements for purposes of measuring overdrafts and annual growths. CEBA requires the Board to enforce the prohibition on overdrafts and the limit on annual growth enacted by CEBA. To do so, the Board must have a means of measuring those overdrafts and the annual growth. The Board proposes that all of these requirements be applicable to all nonbank banks and industrial banks subject to the rule regardless of size. The small entities most likely to be affected by this rulemaking are the industrial banks that are subject to the limitations on overdrafts. According to Board records on overdrafts under the current risk reduction policy, however, very few industrial banks reporting to the Board have incurred overdrafts since the enactment of CEBA. Thus, it does not appear that a substantial number of industrial banks will be affected by the rule. The Board considered exempting small banks from the rule's requirements, but CEBA does not provide an exemption according to the size of the nonbank bank or industrial bank.

List of Subjects in 12 CFR Part 225

Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844), the Board proposes to amend 12 CFR Part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

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

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907 and 3909.

2. In § 225.2 paragraphs (a) through (f) and (g) through (l) are redesignated as paragraphs (b) through (g) and (i) through (n) respectively; new paragraphs (a) and (h) are added; and newly redesignated paragraph (b) is revised to read as follows:

§ 225.2 Definitions.

* * * * *

(a) "Affiliate" means any company that controls, is controlled by, or is under common control with, a bank or nonbank bank.

(b)(1) "Bank" means:

(i) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h); or

(ii) An institution organized under the laws of the United States which both:

(A) Accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

(B) Is engaged in the business of making commercial loans.

(2) The term "bank" does not include those instititutions qualifying under the exceptions listed in section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)).

* * * * *

(h) "Nonbank bank" means any insitution that:

(1) Became a bank as a result of enactment of the Competitive Equality Amendments of 1987 (Pub. L. No. 100–86), on the date of such enactment (August 10, 1987); and

(2) Was not controlled by a bank holding company on the day before the enactment of the Competitive Equality Amendments of 1987 (August 9, 1987).

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3. Subpart F, consisting of §§ 225.51 through 225.53, is added immediately following Subpart E to read as follows:

Subpart F—Limitations on Nonbank Banks

Sec.

225.51 Limitations on activities.
225.52 Limitation on annual rate of asset growth.
225.53 Limitation on overdrafts.

Subpart F—Limitations on Nonbank Banks

§ 225.51 Limitation on activities.

(a) *General limitation.* A nonbank bank may not engage in any activity in which such nonbank bank was not lawfully engaged as of March 5, 1987.

(b) *Activity defined.* For purposes of the limitation in this section, the term "activity" means any line of banking or nonbanking business. The following lines of banking or nonbanking business shall be considered a separate activity for purposes of paragraph (a) of this section:

(1) Taking demand deposits;

(2) Taking other deposits with general third-party payment powers, such as NOW accounts or other non-demand transaction accounts;

(3) Taking time or savings deposit accounts without third-party payment powers;

(4) Making commercial loans (as defined in Schedule RC–C to the Report of Condition) as well as commercial real estate loans, agricultural loans, and loans to individuals for other than family, household, personal or charitable purposes;

(5) Making loans to depository institutions;

(6) Holding obligations (other than securities) of states and political subdivisions in the U.S. (as defined in Schedule RC–C of the Report of Condition);

(7) Making loans to individuals for personal, household, family, or charitable purposes (other than loans described in paragraphs (b) (8) and (9) of this section);

(8) Making loans secured by the borrower's residence;

(9) Credit card lending;

(10) Acting as a trustee, executor, administrator, guardian, managing agent, custodian or in any similar capacity for personal accounts;

(11) Acting as a trustee, investment advisor, or investment manager for employee benefit plans or investment companies registered under the Investment Company Act of 1940;

(12) Acting as a corporate trustee, including registrar, transfer agent, paying agent, fiscal agent, custodian of assets, or any similar capacity;

(13) Providing transaction services for consumer accounts;

(14) Providing transaction services for business accounts;

(15) Providing clearing or custody for securities; and

(16) Acting as a correspondent for other depository institutions.

(17) Engaging in any nonbanking activity, such as underwriting government and other obligations that state member banks are authorized to underwrite, dealing in such securities, acting as a broker for securities, providing investment advice, acting as an insurance agent, acting as a futures commission merchant, or any other activity listed in § 225.25(b) of Subpart C or § 225.126 of this part is considered to be a separate activity for purposes of this section.

§ 225.52 Limitation on Annual Rate of Asset growth.

(a) *Seven percent annual growth rate limitation.* A nonbank bank shall not increase its assets at an annual rate of more than 7 percent during any 12-month period specified in subsection (b).

(b) *Period for determining compliance.* Except as provided in paragraph (d) of this section, a nonbank banks's annual rate of asset growth for purposes of this section shall be determined on a rolling twelve-month basis, commencing initially with the end of the third calendar quarter of 1988 and commencing thereafter with the end of each succeeding calendar quarter *(i.e.* December 31, March 31, June 30, September 30 *et seq.*).

(c) *Computation of annual rate of asset growth.* A nonbank bank's annual rate of asset growth for purposes of this section for each 12-month period described in paragraph (b) of this section shall be computed by comparing its average total assets as reported on Schedule RC–K of its Report of Condition for each calendar quarter ending after August 10, 1989, with the average total assets of the nonbank bank as reported on Schedule RC–K of its Report of Condition for the same calendar quarter of the previous year.

(d) *Alternative method for computing growth over initial 12-month period.* In lieu of using the average total assets for the third quarter of 1988 as the initial base figure for computing the growth rate as described in paragraph (b) of this section, a nonbank bank may elect to use as its initial base for applying the annual growth rate specified in paragraph (a) of this section its total assets as of August 10, 1988, provided it reports to the Board by September 30, 1988 this figure. For such an institution, compliance with the growth rate for the initial 12-month period commencing August 10, 1988, and expiring August 9, 1989, shall be measured by comparing the average total assets reported by the institution on Schedule RC–K of its Report of Condition for the third quarter of 1989 with its total assets on August 10, 1988. For 12-month periods commencing with the fourth quarter of 1988, compliance by such institutions with paragraph (a) of this section shall be measured in accordance with paragraphs (b) and (c) of this section.

§ 225.53 Limitation on overdrafts.

(a) *Definitions.* For purposes of this section—

(1) "Account" means a reserve account, clearing account, or deposit account as defined by the Board's Regulation D (12 CFR 204.2(a)(1)(i)), that is maintained at a Federal Reserve Bank or nonbank bank.

(2) "Cash item" means:

(i) A check other than a check classified as a noncash item; or

(ii) Any other item payable on demand and collectible at par that the Federal Reserve Bank of the District in which the item is payable is willing to accept as a cash item.

(3) "Discount window loan" means any credit extended by a Federal Reserve Bank to a nonbank bank pursuant to the provisions of the Board's Regulation A (12 CFR Part 201).

(4) "Inadvertent accounting error" means an error involving the recordation of entries to an account of a nonbank bank or affiliate that results in an overdraft that was not reasonably foreseeable or could not have been prevented through the maintenance of procedures reasonably adopted by the nonbank bank or the affiliate to avoid such overdraft.

(5) "Inadvertent computer error" means an error resulting from a computer malfunction or from computer processing of adjustments in an account of a nonbank bank or affiliate, or initiation of transactions with a nonbank bank or affiliate, that results in an overdraft that was not reasonably foreseeable or could not have been prevented through the maintenance of procedures reasonably adopted by the nonbank bank or the affiliate to avoid such overdraft.

(6) "Industrial bank" means an institution as defined in 12 U.S.C. 1841(c)(2)(H).

(7) "Noncash item" means an item handled by a Reserve Bank as a noncash item under the Reserve Bank's "Collection of Noncash Items Operating Circular" (*e.g.*, a maturing bankers' acceptance or a maturing security, or a demand item, such as a check with special instructions or an item that has not been preprinted or post-encoded).

(8) "Other nonelectronic transactions" include all other transactions not included as funds transfers, book-entry securities transfers, cash items, noncash items, automated clearing house transactions, net settlement entries, and discount window loans (*e.g.*, original issue of securities or redemption of securities).

(9) An "overdraft" occurs whenever the Federal Reserve Bank, nonbank bank or industrial bank holding an account posts a transaction to the account of the nonbank bank, industrial bank or affiliate that exceeds the balance of the account as determined by the posting rules set forth in paragraphs (d) and (e) of this section.

(10) "Transfer item" means an item as defined in Subpart B of Regulation J (§ 210.25 *et seq* of this title).

(b) *Restriction on overdrafts*—(1) *Affiliates.* Neither a nonbank banks nor an industrial bank shall permit any affiliate to incur any overdrafts in an account with the nonbank bank or industrial bank.

(2) *Nonbank banks or industrial banks.* (i) Neither a nonbank bank nor an industrial bank shall incur any

overdraft in its account at a Federal Reserve Bank on behalf of an affiliate.

(ii) An overdraft by a nonbank bank or industrial bank in its account at a Federal Reserve Bank shall be deemed to be on behalf of an affiliate whenever: (A) A nonbank bank or industrial bank holds an account for an affiliate from which third-party payments can be made; and (B) the aggregate balance of all of the affiliate's accounts with the nonbank bank or industrial bank is less, at the time the nonbank bank or industrial bank incurred an overdraft in its account at a Federal Reserve Bank, than the aggregate balance of all of the affiliate's accounts maintained by the nonbank bank or industrial bank at the opening of business on the day on which the nonbank bank or industrial bank incurred the overdraft in its account at the Federal Reserve Bank.

(c) *Permissible overdrafts*—(1) *Inadvertent error.* An overdraft by a nonbank bank or its affiliate, or an industrial bank or its affiliate that results from an inadvertent computer error or inadvertent accounting error (as defined in paragraph (a) of this section) is a permissible overdraft not subject to paragraph (b) of this section.

(2) *Fully secured primary dealer affiliate overdrafts.* (i) An overedraft is a permissible overdraft not subject to paragraph (b) of this section if:

(A) The overdraft is incurred by an affiliate of a nonbank bank, which affiliate is recognized as a primary dealer by the Federal Reserve Bank of New York in the affiliate's account at the nonbank bank, or if the overdraft is incurred by a nonbank bank on behalf of its primary dealer affiliate in the nonbank bank's account at a Federal Reserve Bank; and

(B) The overdraft is fully secured by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book-entry system.

(ii) An overdraft is fully secured under paragraph (c)(2)(i) of this section when the nonbank bank can demonstrate that the overdraft is secured, at all times, by a fully-perfected security interest in specific, identified obligations described in paragraph (c)(2)(i) of this section with a market value that, in the judgment of the Reserve Bank holding the nonbank bank's account, is sufficiently in excess of the amount of the overdraft to provide a margin of protection in a volatile market or in the event the securities need to be liquidated quickly.

(d) *Posting by Federal Reserve Banks.* For purposes of determining the balance of an account under this section, payments and transfers by nonbank banks and industrial banks processed by the Federal Reserve Banks shall be considered posted to their accounts at Federal Reserve Banks as follows:

(1) *Funds transfers.* Transfer items shall be posted:

(i) To the transferor's account at the time the transfer is actually made by the transferor's Federal Reserve Bank;

(ii) To the transferee's account at the time the transferee's Reserve Bank sends the transfer item or sends or telephones the advice of credit for the item to the transferee, whichever occurs first.

(2) *Book-entry securities transfers against payment.* A book-entry securities transfer against payment shall be posted:

(i) To the transferor's account at the time the entry is made by the transferor's Reserve Bank; and

(ii) To the transferee's account at the time the entry is made by the transferee's Reserve Bank.

(3) *Discount window loans.* Credit for a discount window loan shall be posted to the account of a nonbank bank or industrial bank as of the close of business on the day the loan is made. Debit for repayment of a discount window loan shall be posted to the account of the nonbank bank or industrial bank as of the close of business on the day of maturity of the loan.

(4) *Automated clearing house transfers, cash items, noncash items, net settlement entries and other nonelectronic transactions.* Total aggregate credits for these transactions and entries shall be posted to the account of a notebank bank or industrial bank as of the opening of business on settlement day. Total aggregate debits for these transactions and entries shall be posted to the account of a nonbank bank or industrial bank as of the close of business on settlement day.

(e) *Posting by nonbank banks and industrial banks.* For purposes of determining the balance of an affiliate's account under this section, payments and transfers through an affiliate's account at a nonbank bank or industrial bank shall be posted as follows:

(1) *Funds transfers.* (i) Fedwire transfer items shall be posted:

(A) To the transferor affiliate's account no later than the time the transfer is actually made by the transferor's Federal Reserve Bank;

(B) to the transferee affiliate's account no earlier than the time the transferee's Reserve Bank sends the transfer item, or sends or telephones the advice of credit for the item to the transferee, whichever occurs first.

(ii) For funds transfers not sent or received through Federal Reserve Banks, debits shall be posted to the transferor affiliate's account not later than the time the nonbank bank or industrial bank becomes obligated on the transfer. Credits shall not be posted to the transferee affiliate's account before the nonbank bank or industrial bank has received actually and finally collected funds for the transfer.

(2) *Book-entry securities transfers against payment.*

(i) A book-entry securities transfer against payment shall be posted: (A) To the transferor affiliate's account not earlier than the time the entry is made by the transferor's Reserve Bank; and (B) to the transferee affiliate's account not later than the time the entry is made by the transferee's Reserve Bank.

(ii) For book-entry securities transfers against payment that are not sent or received through Federal Reserve Banks, entries shall be posted:

(A) To the buyer-affiliate's account not later than the time the nonbank bank or industrial bank becomes obligated on the transfer; and

(B) To the seller-affiliate's account not before the nonbank bank or industrial bank has received actually and finally collected funds for the transfer.

(3) *Credits.* Credits for cash items, noncash items, ACH transfers, net settlement entries, and all other nonelectronic transactions shall be posted to an affiliate's account by the nonbank bank or industrial bank on the day of the transaction (i.e., settlement day for ACH transactions or the day of credit for check transactions), but no earlier than the Federal Reserve Bank's opening of business on that day.

(4) *Debits.* (i) Debits for cash items, noncash items, ACH transfers, net settlement entries, and all other nonelectronic transactions shall be posted to an affiliate's account by the nonbank bank or industrial bank on the day of the transaction (e.g., settlement day for ACH transactions or the day of presentment for check transactions), but no later than the Federal Reserve Bank's close of business on that day.

(ii) If a check drawn on an affiliate's account or an ACH debit transfer received by an affiliate is returned by the nonbank bank or industrial bank in accordance with applicable law and agreements, no entry need be posted to the affiliate's account for such time.

(f) *Reporting requirements*—(1) *Initial report.* Any nonbank bank or industrial bank that holds an account for any affiliate from which third-party payments can be made shall report to

the Board within 60 days of the final adoption of this rule all such accounts offered to affiliates.

(2) *Continuing reports.* Whenever a nonbank bank or industrial bank opens or closes an account from which third-party payments can be made for an affiliate, it shall immediately report such action to the Board.

4. § 225.145 is added to read as follows:

§ 225.145 Limitations established by the Competitive Equality Banking Act of 1987 on the activities and growth of nonbank banks.

(a) *Introduction.* Effective August 10, 1987, the Competitive Equality Banking Act of 1987 ("CEBA") redefined the term "bank" in the Bank Holding Company Act ("BHC Act") to include any bank the deposits of which are insured by the Federal Deposit Insurance Corporation as well as any other institution that accepts demand or transaction accounts and is engaged in the business of making commercial loans. 12 U.S.C. 1841(c). CEBA also contained a grandfather provision for certain companies affected by this redefinition. CEBA amended section 4 of the BHC Act to permit a company that on March 5, 1987, controlled a nonbank bank (an institution that became a bank as a result of enactment of CEBA) and that was not a bank holding company on August 9, 1987, to retain its nonbank bank and not be treated as a bank holding company for purposes of the BHC Act if the company and its subsidiary nonbank bank observe certain limitations imposed by CEBA.[1] These limitations are codified in sections 4(f)(2) and (3) of the BHC Act and generally restrict nonbank banks from commencing new activities or cross-marketing programs with affiliates after March 5, 1987, increasing their assets at an annual rate exceeding 7 percent during any 12 month period after August 10, 1988, or permitting overdrafts on behalf of affiliates or incurring such overdrafts at a Federal Reserve Bank. 12 U.S.C. 1843(f)(2) and (3). CEBA also prohibits, with certain limited exceptions, a company controlling a grandfathered nonbank bank from acquiring directly or indirectly after March 5, 1987, more than 5 percent of the assets or shares of a bank or thrift institution. During the course of the Board's consideration of the reports required by CEBA to be filed with the Board by companies that controlled nonbank banks on March 5, 1987, several questions arose as to the scope of these limitations. The Board's views regarding these questions are set forth below and in Subpart F of Regulation Y. (12 CFR Part 225).

(b) *Congressional Findings.* At the outset, the Board notes that the scope and application of the Act's limitations on nonbank banks must be guided by the Congressional findings set out in section 4(f)(3) of the BHC Act. In that section, Congress found that nonbank banks controlled by grandfathered companies, because of their relationships with affiliates, may be involved in conflicts of interest, concentration of resources, or other effects adverse to bank safety and soundness. Congress also found that nonbank banks may be able to compete unfairly against banks controlled by bank holding companies by combining banking services with financial services not permissible for bank holding companies. Accordingly, section 4(f)(3) states that the purpose of the nonbank bank limitations is to minimize any potential adverse effects or inequities by restricting the activities of nonbank banks until further Congressional action in the area of bank powers could be undertaken. Similarly, the Senate Report accompanying CEBA states that the restrictions CEBA places on nonbank banks "will help prevent existing nonbank banks from changing their basic character * * * while Congress considers proposals for comprehensive legislation; from drastically eroding the separation of banking and commerce; and from increasing the potential for unfair competition, conflicts of interest, undue concentration of resources, and other adverse effects." S. Rep. No. 100–19, 100th Cong., 1st Sess. 12 (1987). See also H. Rep. No. 100–261, 100th Cong., 1st Sess. 124 (1987), (the "Conference Report").

(c) *Activity Limitation*—(1) *Activity Defined.* The first limitation established under section 4(f)(3) restricts a nonbank bank to those activities in which it was lawfully engaged as of March 5, 1987. Consistent with the terms and purposes of the legislation and the explicit Congressional directive to minimize potential adverse potential adverse effects or inequities by limiting the activities of grandfathered nonbank banks, the Board believes that the term activity" in this limitation means any line of banking or nonbanking business. This definition does not, however, envision a product-by-product approach to the activity limitation. The Board believes it would be helpful to set out the considerations it will take into account in applying the activity limitation of section 4(f)(3) in the context of the following major categories of bank activities: deposit-taking, lending, trust or fiduciary services, clearing or payment services, and other types of activities engaged in by banks.

(2) *Types of Deposit-Taking Activities.* With respect to deposit-taking, the Board believes that there would generally be at least three distinct types of activity for purposes of section 4(f)(3): Demand deposits, other accounts with general third party payment powers, such as NOW accounts, and time and savings accounts without general third party payment powers. In reaching this conclusion, the Board has relied on the fact that the BHC Act's definition of "bank" itself distinguishes between demand deposit-taking, non-demand transaction accounts, and other forms of deposit activities. Moreover, it is clear from the terms and intent of CEBA that the activity limitation in section 4(f)(3) would prevent, and was designed to prevent, nonbank banks that prior to the enactment of CEBA had refrained from accepting demand deposits in order to avoid coverage as a "bank" under the BHC Act, from starting to take these deposits after enactment of CEBA and thus becoming full-service banks.

(3) *Demand Deposit-Taking Activity.* Under the activity limitation, a nonbank bank may engage only in activities in which it was "lawfully engaged" as of March 5, 1987. Because the nonbank bank could not have been engaged lawfully on March 5, 1987, in both demand deposit and commerical lending activity, the nonbank bank could not thereafter commence the demand deposit-taking or commerical lending activity that it did not conduct on March 5, 1987. The legislative history of this provision confirms this reading. Both the Senate and the Conference Reports regarding CEBA state that this provision confining nonbank banks to activities in which they were lawfully engaged on March 5, 1987, would "prevent[ing] the nonbank bank from, for example, both offering demand deposits and engaging in the business of making commercial loans * * *". H. Rep. No. 100–261 at 124–25; S. Rep. No. 100–19 at 32. The Board notes that absent this interpretation a nonbank bank that acceptd only savings and time deposits and made both consumer and commercial loans could, contrary to the stated purpose of the CEBA, convert

[1] 12 U.S.C. 1843(f). Such a company is treated as a bank holding company, however, for purposes of the anti-tying provisions in section 106 of the BHC Act Amendments of 1970 (12 U.S.C. 1971 *et seq.*) and the insider lending limitations of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b). The company is also subject to certain examination and enforcement provisions to assure compliance with CEBA.

itself into a full-service bank. For these reasons, the Board concludes that the term "activity" in section 4(f)(3) differentiates between demand deposits and other types of deposit activity and that an institution that accepted only time and savings deposits as of March 5, 1987, would be engaged in a new activity if it began to accept demand deposits after that date.

(4) *Transaction Accounts.* Similarly, the Board considers nondemand deposits withdrawable without restriction by check or other similar means to constitute a separate line of business for purposes of applying the activity limitation in section 4(f)(3). Thus, an institution that on March 5, 1987, offered only time and savings accounts that were not withdrawable by check could not thereafter begin a transaction account business by offering, for example, NOW accounts or other types of transaction accounts. In this regard, the Board notes that historically the provision of checking accounts has been viewed as a separate activity and in the past served to differentiate commercial banks and thrifts institutions, industrial banks and similar institutions. The conduct of this activity also involves different expertise and technical programs than is involved in offering non-checking savings and time deposits. As noted above, the definition of bank in the BHC Act as amended by CEBA also itself distinguishes between demand deposits, transaction accounts and other non-checkable deposits.

(5) *Lending Activities Generally.* With respect to lending activity, CEBA and the BHC Act also distinguish between commerical and consumer lending and, in the Board's view, these types of lending constitute separate and distinct lines of business or activity for purposes of CEBA. Under the definition of "bank" in the BHC Act in effect both prior to and after enactment of CEBA, a nonbank bank that offered demand deposits and made consumer loans could not engage in the business of making commercial loans without losing its nonbank bank status. Thus, insofar as the bank definition is concerned, commerical lending is an activity separate and apart from other types of lending.

(6) *Commerical Lending Activity.* As noted, the activity limitation in section 4(f)(3) of CEBA would prevent a nonbank bank from both offering demand deposits and engaging in the business of making commercial loans since such an institution could not have been "lawfully engaged" in both of these activities on March 5, 1987, insofar as the BHC Act is concerned. Moreover, in order for the activity restriction to achieve its stated legislative purpose of preventing a nonbank bank from offering both demand deposits and commerical loans (H. Rep. No. 100–261 at 124–25), the term "activity" in section 4(f)(3) must differentiate between commerical and consumer lending. Otherwise, there would be nothing to prevent a nonbank bank that accepted deposits and made consumer but not commerical loans as of March 5, 1987, as many of the nonbank banks stated in their CEBA reports, from commencing this activity after that date without loss of grandfather privileges under CEBA. Accordingly, the Board concludes that such a nonbank bank would be engaged in a new activity if it began to make commerical loans after that date and would lose its entitlement to grandfather rights under CEBA.

(7) *Legislative History.* The Board notes that the legislative history of a predecessor to this provision of CEBA states that the activity limitation for nonbank banks was intended "to prevent an institution engaged in a limited range of functions from expanding into new areas and becoming, in essence, a full-service bank". H. Rep. No. 99–175, 99th Cong., 1st Sess. 13 (1985). The House Report goes on to state that, "[t]hus, in particular a nonbank bank that is a 'consumer bank' (i.e., it engaged in no commerical lending to avoid the existing definition of bank) would not be permitted to begin to engage in commerical lending after being grandfathered under this Act." *Id.*

(8) *Other Types of Consumer Lending Activity.* The proposed rule differentiates between three distinct lines of consumer lending activity for purposes of CEBA: consumer lending, loans secured by the borrower's residence, and credit card lending activities. This distinction between types of specialized lending is reflected in the Board's regulations that specify the types of lending activities permissible for bank holding companies. Section 225.25(b)(1) of the Board's Regulation Y (12 CFR 225.25(b)(1)) reflects the separate types of lending activity conducted by specialized companies offering consumer loans, credit cards, mortgage loans and commerical finance. The Board believes that a credit card business as well as home mortgage lending are recognized, discrete lines of business activity. Indeed, CEBA itself recognizes a distinction in the case of credit card activity by creating a specific exemption from the bank definition for banks that engage only in credit card operations. The Board has also approved a number of proposals by bank holding companies to establish specialized credit card banks, and has long permitted bank holding companies to engage in the mortgage lending business as a separate line of business activity. In light of existing law, industry practice and the legislative history of CEBA, the Board concludes that credit card lending and lending secured by the borrower's residence would constitute separate lines of lending activity for purposes of applying the limitation on nonbank bank activities in section 4(f)(3). Thus, a nonbank bank that was engaged in consumer lending activity as of March 5, but did not engage in home mortgage lending or credit card lending would not be able to commence these activities after March 5 without loss of its grandfather benefits under CEBA.

(9) *Change in Types of Consumer Loans Permitted.* This interpretation of the term "activity" would not prohibit a bank that was offering one type of consumer loan on the grandfather date from offering a different type of consumer loan thereafter. For example, a bank that offered consumer automobile loans on the grandfather date could offer consumer boat loans thereafter, but could not commence a mortgage lending business or credit card business unless it was so engaged on March 5, 1987. See H. Rep. No 99–175, *supra* at 13 (a grandfathered nonbank bank could offer a customer a consumer loan to purchase a boat even if no such loans were outstanding on the grandfather date, if other consumer loans, such as consumer loans to purchase a car, were outstanding on that date). Similarly, a nonbank bank that was lawfully engaged in the commercial lending business as of March 5, 1987, could offer any type of commercial loan thereafter and would not be limited to the precise types of commercial loans offered on March 5.

(10) *Definition of Commercial Loans.* For purpose of the activity limitation, the Board believes the term "commercial loan" should include loans to sole proprietorships, partnerships, corporations and other business enterprises, whether secured or unsecured, as defined in Schedule RC–C of the report of condition, as well as commercial real estate loans, and agricultural loans, and loans to individuals for the purposes other than personal, family, household, or charitable purposes. It should be noted, however, that the nonbank bank could not engage in other types of lending, such as issuance of standby letters of

credit of foreign exchange. The determination as to whether other types of lending or lending-type activity would constitute a new activity would depend upon the characteristics of the lending activity and should not be commenced without discussion with the Board.

(11) *Loans to Depository Institutions.* Loans to depository institutions are not included under the activity "commercial loan," but would constitute a separate and distinct activity. This lending activity constitutes a unique service, generally referred to as the federal funds market, in which all types of depository institutions participate. It has traditionally been treated separately from the commercial lending market and the Board believes it should continue to be regarded as a separate and distinct activity.

(12) *Trust Activities.* With respect to trust activities, the Board has traditionally viewed these activities as falling within three main categories: trustee, executor, or administrator for personal trusts and estates; trustee, investment advisor, or investment manager for employee benefit plans; and corporate trust services, including voting as transfer, paying or fiscal agent. Accordingly, these lines of activity would properly constitute separate activities under section 4(f) (3).

(13) *Clearing and Payment Activities.* Clearing and payments services also include several distinct activities. These activities reflect, in part, a depository institution's orientation toward either consumer or commercial entities. Accordingly, the Board considers the following payment-related services to be examples of discrete activities: transaction services for consumer accounts; transaction services for business accounts; clearing or custody of securities; clearing merchant credit card drafts; and acting as a correspondent bank for other depository institutions.

(14) *Transaction Services.* Transaction services for consumer accounts include but are not limited to check-based payment services, receiving preauthorized transactions (e.g. automated clearinghouse transactions), limited funds transfers (*e.g.* through Fedwire or CHIPS), and providing consumers access to a point-of-sale network. Transaction services for business accounts include, but are not limited to, check-based payment services, originating and receiving preauthorized transactions (e.g. automated clearinghouse transactions), funds transfers (e.g. through Fedwire or CHIPS), and operating a point-of-sale network for the use of business customers. The distinction between consumer transaction services and business transaction services is consistent with the distinction in the BHC Act between commercial and consumer lending.

(15) *Securities Clearing and Custody.* The Board considers clearing and custody of securities, unrelated to trust activities, as a safekeeping or agency activity involving investment instruments and therefore an activity separate and different from funds based transaction services.

(16) *Correspondent Services.* The Board considers providing correspondent services to other depository institutions.

(17) *Nonbanking Activities.* With respect to other types of nonbanking activity, section 4(f) (3) would not permit a grandfathered nonbank bank to expand into new business activities. Thus, for example, a grandfathered nonbank bank could not commence after March 5, 1987, any new types of nonbanking activities, including, for example, discount securities brokerage, full service securities brokerage for financially sophisticated customers, investment advisory services, acting as a broker or dealer in government securities or other bank-eligible securities, acting as an underwriter in government securities, foreign exchange advisory or transaction services, personal property leasing, real property leasing, data processing for third parties, insurance agency activities, insurance underwriting, management consulting, futures commission merchant, or any of the other types of nonbanking activities listed in § 225.25(b) of Regulation Y or that have been determined to be impermissible for bank holding companies (e.g. real estate investment and development or real estate syndication). A nonbank bank engaged on the grandfather date in one aspect of nonbanking activity (*e.g.* leasing airplanes) could commence leasing any type of product (*e.g.* railroad cars).

(18) *Meaning of "Engaged in".* In order to be "engaged in" an activity, a nonbank bank must demonstrate that it had a program in place to provide a particular product or service associated with the grandfathered activitiy to a customer and that it was in fact offering the product or service to the customer as of March 5, 1987. Thus, a nonbank bank is not engaged in an activity as of March 5, 1987, if the product or service in question was in a planning state as of that date but had not been offered or delivered to a customer. Consistent with prior Board interpretations of the term activity in the grandfather provisions of section 4, the Board does not believe that a company may be engaged in an activity on the basis of a single isolated transaction. For example, a nonbank bank that held an interest in a single real estate project would not thereby be engaged in real estate development for purposes of this provision, unless evidence was presented indicating the interest was held under a program to commence real estate investment or development business.

(19) *Meaning of "As of".* The board believes that the grandfather date "as of March 5, 1987" as used throughout section 4(f)(3) should refer to activities engaged in on March 5, 1987, or a reasonably short period preceding this date not exceeding thirteen months. Activities that the institution had terminated prior to March 5, 1988, however, would not be considered to have been conducted or engaged in "as of" March 5. Moreover, in order for the activity to qualify as being conducted "as of" March 5, it must have been conducted while the institution was a nonbank bank. Activities conducted while the institution was a full-service bank but not after it was converted to a nonbank bank, would not be permissible for the nonbank bank even if the activity had been conducted within a few months of March 5, 1987.

(d) Cross-Marketing Activity—(1) *In General.* Section 4(F)(3) also limits cross-marketing activities by nonbank banks and their affiliates. Under this provision, a nonbank bank may not offer or market a product or service of an affiliate unless the product or service may be offered by bank holding companies generally under section 4(c)(8) of the BHC Act. In addition, a nonbank bank may not permit any of its products or services to be offered or marketed by or through a nonbank affiliate unless the affiliate engages only in activities permissible for a bank holding company under section 4(c)(8). These limitations are subject to an exception for products or services that were being so offered or marketed as of March 5, 1987, but only in the same manner in which they were being offered or marketed as of the grandfather date.

(2) *Examples of Impermissible Cross-Marketing.* The Conference Reort illustrates the application of this limitation to the following two covered transactions: (i) products and services of an affiliate that are not permissible under the BHC Act, and (ii) products and services of the nonbank bank. In the first case, the restrictions would prohibit, for example, a company from marketing life insurance or automotive supples through its affiliate nonbank bank because these products are not

generally permissible under the BHC Act. H. Rep. NO. 100–261 *supra* at 126. In the second case, a nonbank bank may not permit its products or services to be offered or marketed through a life insurance affiliate or automobile parts retailer because these affiliates engage in activities prohibited under the BHC Act. *Id.*

(3) *Permissible Cross-Marketing.* On the ther hand, a nonbank bank could offer to its customers consumer loans from an affiliated mortgage banking or consumer finance company. These affiliates could likewise offer their customers the nonbank bank's products or services provided the affiliates engaged only in activities permitted for bank holding companies under the closely-related to banking standard of section 4(c)(8) of the BHC Act. If the affiliate is engaged in both permissible and impermissible activities within the meaning of section 4 (c)(8) of the BHC Act, the affiliates could not offer or market the nonbank bank's products or services.

(4) *Product Approach to Cross-Marketing Restriction.* Unlike the activity restrictions, the cross-marketing restrictions of CEBA apply by their terms to individual products and services. Thus, an affiliate of a nonbank bank engaged in nonbanking activites that are not permissible for bank holding companies that was marketing a particular product or service of a nonbank bank on the grandfather date could continue to market that product and, as discussed below, could change the terms and conditions of the loan. The nonbank affiliate could not, however, begin to offer or market another product or service of the nonbank bank such as a deposit account, trust service or a different type of loan product (unless the affiliate engaged only in permissible activities as described in paragraph (d)(3) of this section. Thus, a securities underwriting company that as of March 5, 1987, offered or marketed to its customers automobile loans from an affiliated nonbank bank could not begin to offer or market to its customers checking accounts from the bank without losing its grandfather privileges under CEBA.

(5) *Change in Terms and Conditions Permitted.* The cross-marketing restrictions would not, however, limit the ability of the institution to change the specific terms and conditions of the particular grandfathered product or service. The Conference Report indicates a legislative intent not to lock into place the specific terms or conditions of a grandfathered product or service. For example, a nonbank bank marketing a three-year, $5.000 certificate of deposit through an affiliate under the exemption could offer a one-year $2,000 certificate of deposit with a different interest rate after the grandfather date. Modifications that alter the type of product, however, are not permitted. Thus, a nonbank bank that marketed through affiliates on March 5, 1987, only certificates of deposit could not commence marketing MMDA's or NOW accounts after the grandfather date.

(6) *Grandfather Provision for Cross-Marketing.* A product or service not permissible for bank holding companies under section 4(c)(8) of the BHC Act would nevertheless be permitted to be offered or marketed by a nonbank bank under the cross-marketing provisions of section 4(f)(3) under certain conditions if they were offered or marketed as of the March 5, 1987 grandfather date. In the Board's opinion, the terms "offered or marketed" in the cross-marketing restrictions refer to the presentation to a customer of an institution's products or service through any type of program, including telemarketing, advertising brochures, direct mailing, personal solicitation, customer referrals, or joint marketing agreements or presentations. An institution must have offered or actually marketed the product or service on March 5 or shortly before that date (as discussed above) to qualify for the grandfather privilege. Thus, if the cross-marketing program was in the planning stage on March 5, 1987, the program would not qualify for grandfather treatment under CEBA.

(7) *Limitations on Cross-marketing to "in the same manner".* Under the cross-marketing provision, products or services qualifying for grandfather treatment may continue to be offered or marketed but only "in the same manner" in which they were offered or marketed as of March 5, 1987. Thus, the means of offering or marketing the products or services must remain the same as on the grandfather date. Accordingly, an affiliate not using direct mailings as a marketing technique as of the grandfather date for a particular product or service of the nonbank bank may not commence this type of marketing after the grandfather date.

(8) *Eligibility for Cross-Marketing Grandfather Exemption.* The Conference Report also clarifies that entitlement to an exemption is specific to an institution. An affiliate that was not engaged in cross-marketing products or services as of the grandfather date may not commence these activities under the exemption even if such activities were being conducted by another affiliate.

(e) *Eligibility for Grandfathered Nonbank Bank Status.* In reviewing the CEBA reports, the Board notes that a number of institutions that had not commenced business operations on August 10, 1987, the date of enactment of CEBA, claimed grandfather privileges under section 4(f)(3) of CEBA. To qualify for grandfather privileges under section 4(f)(3), the institution must have "bec[o]me a bank as a result of the enactment of [CEBA]" and must have been controlled by a nonbanking company on March 5, 1987. 12 U.S.C. 1843(f)(1)(A). An institution that did not have GDIC insurance on August 10, 1987, and that did not accept demand deposits or transaction accounts or engage in the business of commercial lending on that date, would not have become a "bank" as a result of enactment of CEBA. Thus, institutions that had not commenced operations on August 10, 1987, could not qualify for grandfather privileges under section 4(f)(3) of CEBA. This view is supported by the activity limitations of section 4(f)(3), which, as noted, limit the activities of grandfathered nonbank banks to those in which they were lawfully engaged as of March 5, 1987. A nonbank bank that had not commenced conducting business activities on March 5, 1987, could not after enactment of CEBA engage in any activities under this provision.

(f) *Enforcement of Nonbank Bank Limitations.* The Board notes that enforcement of the limitations on nonbank banks is specified in section 4(f)(4) of the BHC Act. Under that section, the grandfather provisions in section 4(f)(1) of this Act cease to apply if a nonbank bank subsidiary fails to comply with the limitations in section 4(f)(3). In that event, the Act requires the grandfathered company to "divest control of each bank it controls within 180 days after such company becomes a bank holding company due to the loss of such exemption."

Board of Governors of the Federal Reserve System, June 2, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–12829 Filed 6–7–88; 8:45 am]

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FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 575, 576, and 577

[No. 88-423]

Federal Savings and Loan Insurance Corporation; Receivers

Date: May 26, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Federal Home Loan Bank Board ("Board"), in its own right and as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), hereby seeks comments on proposed regulations that will govern the determination of claims filed against the FSLIC as Receiver for failed savings and loan institutions, and of requests for injunctive or declaratory relief arising from threatened actions by the FSLIC as Receiver. These proposed regulations incorporate interim procedures that have been in effect since July 1, 1986, and will continue to be in effect pending adoption of final regulations governing the matters addressed herein. Those interim procedures were adopted pursuant to 12 U.S.C. 1437 (1982), and were published in the Federal Register on April 21, 1988 (53 FR 13105).

DATE: Comments must be received by August 8, 1988.

ADDRESS: Send comments to Director, Information Section, Office of the Secretariat, Fedeal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at the Board's Information Services office at 801 18th St. NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Christopher Bellotto, Assistant General Counsel, (202) 377-7401; or Judith L. Friedman, Associate General Counsel, (202) 377-7399; Adjudication Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On November 8, 1985, the Board proposed amendments and revisions to its regulations governing the conservatorship and receivership of associations chartered by the Board or the accounts of which are insured by the FSLIC. Board Res. No. 85-1007, 50 FR 48970 (November 27, 1985). Pending final adoption of the proposed amendments and revisions, the Board, on April 21, 1988, provided public notice of interim procedures in order to assist claimants and other persons affected by threatened actions by the FSLIC as Receiver in the filing of Requests for Expedited Relief, claims against the FSLIC as Receiver, and appeals from decisions of the FSLIC as Receiver. Board Res. No. 88-229, 53 FR 13105 (April 21, 1988).

The purpose of the proposed regulations is to provide a uniform procedure under which persons seeking relief from actions threatened by the FSLIC as Receiver for a failed institution, or seeking to recover funds or gain other relief from an FSLIC receivership, may exhaust their administrative remedies at the Board. The Board regards such exhaustion of administrative remedies as a prerequisite to the availability of judicial review of actions by the FSLIC as Receiver. These proposed regulations supplement the regulations proposed by the Board in its rulemaking, begun November 27, 1985, addressing the powers of the FSLIC as Receiver.

The Board wishes to clarify that, although the proposed regulations regarding claims filed with the FSLIC as Receiver state that a loan participant may be a claimant, the regulations do not purport to make a binding determination that all loan participants are claimants. The Board, in its Notice of Proposed Rulemaking issued November 8, 1985, made it clear that the FSLIC as Receiver of an institution, the accounts of which are insured by the FSLIC, recognizes the validity of certain secured obligations of insured institutions, entered into pursuant to legal authority, and the right of a secured creditor in certain circumstances to cause the liquidation of collateral. Further, the FSLIC as Receiver may recognize the holder of a participating interest in a loan in which the Receiver also holds a participating interest, or which the Receiver services, as one having an ownership interest and not a creditor of the insured institution in receivership. In the event, however, that a Receiver disputes a creditor's claim to a security interest in an asset of the institution or a participant's characterization of its status, the Receiver may require such creditor or other entity to establish its claimed status pursuant to these procedures; and the Receiver in such cases may take such action as is deemed necessary to protect the Receiver's interest in any asset. Commenters are particularly directed to § 575.2(i)(1)(iv) of the proposed regulations, which provides that "Claimant" may include loan participants.

Copies of the Board's administrative decisions are available from the Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G St. NW., Washington, DC. The Board's administrative decisions may also be accessed on the Westlaw and Lexis computer research systems.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small entities to which the proposed rule would apply.* The proposed rules would apply to all Claimants, Petitioners, and Receiverships without regard to size.

3. *Impact of the proposed rule on small entities.* The Board believes that the proposed rules will not have any disparate effect on small entities. The proposed rules are a refinement of existing procedures and would make it easier for small businesses and/or individuals to represent themselves before the Board without incurring extensive costs for legal services.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* In the above **SUPPLEMENTARY INFORMATION,** the Board is soliciting comment on the rule as proposed.

List of Subjects in 12 CFR Parts 575, 576, and 577

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby purposes to amend Chapter V, by adding new Parts 575, 576, and 577, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

1. Subchapter D is amended by adding new Parts 575, 576, and 577 to read as follows:

PART 575—PROCEDURES FOR THE ADMINISTRATION AND DETERMINATION OF CLAIMS FILED WITH THE FSLIC AS RECEIVER

Sec.

575.1 Purpose.
575.2 Definitions.

Subpart A—Notice to Potential Claimants

575.3 Publication of notice.
575.4 Proof of claim.
575.5 Republication of notice.
575.6 Uninsured depositors.

Subpart B—Procedure for Initial Review of Claims

575.7 Agents of the Special Representative.
575.8 Control log for proofs of claim.
575.9 Reviews of proof of claim.
575.10 Review on the merits of a claim.
575.11 Initial determination.

Subpart C—Procedure for Review of Claims Retained for Further Review

575.12 Special Representative and Claims Counsel.
575.13 Elements of review.
575.14 Claims on an expedited basis.

Subpart D—Standards for Determination of Claims

575.15 Burden of proof.
575.16 Exclusion from claims procedure.
575.17 Application of claims procedure.
575.18 Criteria for the determination of claims for provision of services, supplies and materials.
575.19 Claims to security, priority or preference.

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); 48 Stat. 132, as amended (12 U.S.C. 1464); 48 Stat. 1259, as amended (12 U.S.C. 1729).

§ 575.1 Purpose.

(a) The purpose of these procedures is to provide for the uniform administration and determination of claims filed with the FSLIC as Receiver in all receiverships in the Federal Home Loan Bank/FSLIC system. These procedures are to be followed by Special Representatives and managing officers of the receiverships to assure compliance with the Federal Regulations governing the processing and determination of claims, and to insure uniformity of notices to claimants, documentation of claims, determination of the merits of claims by allowance or disallowance in whole or in part, payment of claims, and the review process. Full compliance with and exhaustion of these procedures is a prerequisite to review by the Federal Home Loan Bank Board ("Bank Board"). Judicial review of the disallowance in whole or in part of a claim against the assets of the FSLIC as Receiver is available only after exhaustion of these procedures and review and final agency action by the Bank Board.

(b) The Bank Board, and its Office of General Counsel, have made it clear that the FSLIC as Receiver of an institution, the accounts of which are insured by the FSLIC, recognizes the validity of certain secured obligations of insured institutions, entered into pursuant to legal authority, and the right of a secured creditor in certain circumstances to cause the liquidation of collateral. Further, the FSLIC as Receiver may recognize the holder of a participating interest in a loan in which the Receiver also holds a participating interest, or which the Receiver services, as one having an ownership interest and not a creditor of the insured institution in receivership.

(c) The Bank Board, is providing these procedures, is not directing the FSLIC as Receiver to require such secured creditors to observe all such noticed procedures as a precondition of exercising valid liquidation rights pursuant to valid security contracts entered into by an insured institution as authorized under its governing law prior to the appointment of the Receiver. Nor is the Bank Board directing the FSLIC as Receiver to subject such holders of participating interests that are not creditors of the insured institution in receivership generally to such procedures. In the event, however, that a Receiver disputes a creditor's claim to a security interest in an asset in which the institution has an interest or a participant's characterization of its status, the Receiver may require such creditor or other entity to establish its claimed status pursuant to these procedures; and the Receiver in such cases may take such action as is deemed necessary to protect the Receiver's interest in any asset.

§ 575.2 Definitions.

For the purposes of these procedures, the procedures for Requests for Review, and the procedures for Requests for Expedited Relief, the following definitions shall apply.

(a) "Administrative expenses of the association" means those reasonable expenses for services actually provided for the association by nonemployee professionals, such as accountants, attorneys, appraisers or examiners, that in the opinion of the Special Representative actually benefited the association of the receivership estate.

(b) "Affected Person" means a person, corporation, partnership or other legal entity that owns or has an interest in real or personal property, or is otherwise obligated on a debt which is secured by real or personal property, against which the Receiver threatens to take action that may affect, impair, diminish or terminate such interest. By way of example only, if the Receiver posts for foreclosure pursuant to a deed of trust, the legal owner or owners of the real estate encumbered with the lien sought to be foreclosed would be an "Affected Person."

(c) "Agent of the Special Representative" means an employee of the Receiver designated by the Special Representative to perform certain functions, which include but are not limited to maintaining a tracking system of the claims filed with the Receiver and performing an initial review of the Proofs of Claim submitted to the Receiver.

(d) "Applicant" means any person or entity that asserted a claim against the Association of the Receiver and seeks review by the Bank Board.

(e) "Association" means a savings and loan association or savings bank for which the Bank Board has appointed the FSLIC as Receiver.

(f) "Board" means the Federal Home Loan Bank Board, as defined in 12 CFR 500.10 or its authorized agent.

(g) "Certificate of Mailing" means a written statement certifying that the referenced document has been placed in the United States mail, first class, postage prepaid, on the date specified.

(h) "Claim" means the assertion of a right to payment or other relief against an association or the Receiver; provided, however, that it shall not include the right to deposit insurance which, if appropriate, is paid by FSLIC Corporate, or a Request for Expedited Relief which is filed with the Bank Board. All claims shall be submitted in writing in a Proof of Claim.

(1) "Claim" includes but is not limited to:

(i) Demand for recoupment, set-off, security, priority, or preference;

(ii) Request to foreclose or to oppose foreclosure by the Receiver on security property or assets of the association;

(iii) Demand for interest, penalties, fees or the recognition or nonrecognition of liens securing equitable subordinated claims;

(iv) Administrative expenses of the association, provided, however, that a proof of claim need not be filed for services that were actually rendered, within 30 days prior to the Receiver's taking possession, by accountants, attorneys, appraisers or examiners; such services will be considered for priority payment by the Receiver as explained in Subpart D of this Part 575, if in the opinion of the Receiver such services are of benefit to the receivership;

(v) Demand by employees of the association for wages and salaries, including vacation, severance, sick leave pay and contributions to employee benefits plan; provided that a proof of claim need not be filed for wages, salaries, and benefits earned within 30 days prior to the appointment of the Receiver that do not exceed $2,000, which wages, salaries, and benefits will be considered for priority payment by the Receiver as explained in Subpart D of this Part 575.

(2) "Reconcilable claim(s)" means a claim that may be allowed in whole

based upon the Receiver's review of the books and records of the association or the Receiver in the absence of additional fact finding or additional consideration of related legal issues.

(3) "Claim(s) retained for further review" means those claims that are not Reconcilable Claims.

(i) "Claimant" means any person or entity asserting a claim against the association or the Receiver.

(1) A Claimant may include but is not limited to:

(i) Holder(s) of claim(s) that appear on the face of the books or records of the association, or are otherwise known to the Receiver, on the date of the appointment of the Receiver;

(ii) Holder(s) of claim(s) that appear on the face of the books or records of the association or the Receiver, or are otherwise known to the Receiver subsequent to the date of the appointment of the Receiver;

(iii) Holder(s) of claim(s) that arise from acts or omissions of the Receiver;

(iv) Holder(s) of a participation interest in a loan originated by the association or in which the association is participating;

(v) Borrower(s);

(vi) Guarantor(s);

(vii) Secured creditor(s) or unsecured creditor(s);

(viii) Mechanic's, materialmen's or other lien holder(s) or person(s) or entities that seek to obtain a mechanic's, materialmen's or other lien against assets of the association or assets in which the Receiver has or seeks to assert an interest; or

(ix) Any person(s) or entities seeking to recover civil money damages or equitable relief against the association or the Receiver.

(2) Claimants, at their election, may be represented by an agent, who shall be designated and identified to the Receiver in writing by name and address. Upon such designation, all correspondence and communication shall be between the Special Representative and the agent for the Claimant. For purposes of these procedures the term claimant shall be deemed to include any properly designated agents of the Claimant.

(j) "Claims Counsel" means legal counsel retained to represent the Receiver, as designated by the Special Representative with the consent of the General Counsel, to perform specified tasks, hereinafter described.

(k) "Claims procedures" means the Procedures for the Administration and Determination of Claims Filed with the FSLIC as Receiver.

(l) "Current bills" means those administrative expenses of the Receiver incurred on or subsequent to the date of the appointment of the Receiver, and includes costs, expenses and debts of the Receiver.

(m) "Depositor" or "Accountholder" means the holder of a withdrawable account or accounts in an association.

(n) "Director, OFSLIC" means the Director of the Office of the Federal Savings and Loan Insurance Corporation, as defined in 12 CFR 500.20.

(o) "Filed with" or "served upon" means actually received.

(p) "FSLIC" means the Federal Savings and Loan Insurance Corporation, as defined in 12 CFR 500.4.

(q) "General Counsel" means the General Counsel to the Bank Board, as defined in 12 CFR 500.17, or an attorney(s) in the Office of General Counsel ("OGC") designated by the General Counsel.

(r) "Insurance Division, OFSLIC" means the Insurance Division of the Federal Savings and Loan Insurance Corporation, as defined in 12 CFR 500.20(a).

(s) "Legal holiday" means those days designated as a legal holiday by the President or the Congress of the United States of America.

(t) "Petitioner" means an Affected Person filing and Request for Expedited Relief.

(u) "Proof of Claim" means the form specified by the Director, OFSLIC, with the concurrence of the General Counsel, upon which a claim shall be submitted in writing. The Claimant shall have a continuing duty to supplement and update information contained therein, including but not limited to advising the Receiver in writing of the Claimant's current address.

(v) "Publish" is defined at 12 CFR 549.1(a).

(w) "Receiver" means the FSLIC or the Federal Deposit Insurance Corporation as Receiver as appointed by the Bank Board pursuant to applicable federal law.

(x) "Receiver's record" means all notices to claimants, Proof(s) of Claim, anything required by the procedures and any documentation and other writings compiled by the Special Representative that form the basis and rationale for the Receiver's determination as to the allowance or disallowance in whole or in part of a claim.

(y) "Request for Expedited Relief" means a written request submitted by an Affected Person to the Bank Board in accordance with applicable procedures. A Request for Expedited Relief is not a "claim" as defined in paragraph (h) of this section.

(z) "Special Representative" means individual(s) designated as Special Representative(s) for the FSLIC as Receiver for an association as stated in the Board Resolution appointing the FSLIC as Receiver. The Director, OFSLIC, with the concurrence of the General Counsel, shall designate the Special Representative(s) for each receivership who will have primary responsibility for the administration of the claims procedure. The Special Representative(s) shall conduct the claims procedure, including the determination of the merits of claims.

Subpart A—Notice to Potential Claimants

§ 575.3 Publication of notice.

In accordance with the existing regulations and orders of the Board, promptly after the date of appointment, the Receiver shall publish notice to all potential claimants of the association as shown on the books and records of the association, or as otherwise may be known to the Receiver, of their right to present claims to the Receiver and simultaneously shall mail to such claimants at their last known address:

(a) A notice of their right to present claims to the Receiver,

(b) A Proof of Claim form, and

(c) A copy of the "Procedures and Instructions for Filing Claims with the FSLIC as Receiver."

Demands by Accountholders for deposit insurance will be determined by the Insurance Division, OFSLIC, in a separate proceeding and not pursuant to this Claims Procedure.

§ 575.4 Proof of claim.

The notice shall provide that a Proof of Claim shall be filed with the Receiver on or before a specified date, which is not less than 90 days from the date of the first publication of such notice.

§ 575.5 Republication of notice.

Such notice shall be republished 30 days and 60 days after the date of the first publication. The Special Representative shall retain copies of the published notices in the files of the Receiver.

§ 575.6 Uninsured depositors.

(a) These Claims Procedures do not apply to claims by depositors, which will be determined by the Insurance Division, OFSLIC, under applicable procedures. Uninsured depositors will receive a Certificate of Claim in Liquidation for any uninsured amount on deposit. A copy of that Certificate will be provided to the Receiver by the Insurance Division.

(b) The Receiver will retain the Certificate for the period of the receivership. When there is a distribution to general creditors, such claims will be paid pro rata with others of the same priority out of the assets of the receivership.

(c) A depositor also may be a claimant under this Claims Procedure for other claims not based upon insurance of accounts. The FSLIC need not file a claim for amounts of deposits on which it pays insurance or otherwise satisfies its insurance obligation.

Subpart B—Procedure for Initial Review of Claims

§ 575.7 Agents of the Special Representative.

The Special Representative shall designate as many agents, as, in the opinion of the Special Representative, are necessary and appropriate to review and process claims filed with the Receiver and to perform functions as assigned by the Special Representative ("agent of the Special Representative"). The Special Representative, in consultation with the General Counsel, shall designate from the law firm(s) retained to advise the Receiver as many Claims Counsel as are necessary to assist in the claims process. Such law firm(s) shall act under the supervision of and be advised by the General Counsel.

§ 575.8 Control log for proofs of claim.

All Proofs of Claim filed with the Receiver shall be recorded by entry into a control log in the chronological order by the date on which such Proof of Claim was filed with the Receiver. The control log shall include the name of each claimant and an assigned serial number.

§ 575.9 Reviews of proof of claim.

After each Proof of Claim is entered into the control log, an agent of the Special Reprsentative shall review the Proof of Claim to determine whether it has been properly filed in accordance with the directions contained in the Notice to Claimants and the Proof of Claim form ("properly filed").

(a) If a Proof of Claim is found not to be properly filed, a copy of it shall be returned to the claimant promptly with a written explanation of the deficiencies in it ("deficiency notice"). The deficiency notice shall advise the claimant that a corrected Proof of Claim must be filed with the Receiver within the later of 30 days from the date of the mailing of the deficiency notice or the filing date published under § 575.4, and that failure to correct the deficiencies before the expiration of the later time period may result in disallowance of the claim.

(b) In the discretion of the Special Representative, if material deficiencies in the Proof of Claim are not timely corrected, the claim may be disallowed in whole or in part. The determination of disallowance for failure to correct deficiencies in the Proof of Claim shall be in writing and explain the deficiencies that remain and shall be mailed promptly to the Claimant by certified mail, return receipt requested, and regular mail with a certificate of mailing. A copy of the determination, the certificate of mailing, and the receipt card, if any, shall be maintained in the files of the Receiver for the duration of the receivership, and shall become part of the administrative record.

(c) The originals of a Proof of Claim, deficiency notice, and any corrected Proof of Claim shall be retained in the files of the Receiver and shall become part of the record with respect to such claim.

(d) When a Proof of Claim or any corrected Proof of Claim is determined to be properly filed, the claim shall be promptly assigned to an agent of the Special Representative for initial review on the merits. A properly filed corrected Proof of Claim shall supersede a previously filed deficient Proof of Claim for purposes of review on the merits.

§ 575.10 Review on the merits of a claim.

The review on the merits shall determine whether each claim:

(a) Is a Reconcilable Claim that the Special Representative may allow in whole based upon the books and records of the association or the Receiver, which books and records appear to be reliable and to provide no basis for disallowance; or

(b) Is a claim that should be retained for further review, which claim the Special Representative cannot allow in whole or disallow in whole or in part in the absence of further review or investigation.

§ 575.11 Initial determination.

The Special Representative shall notify each Claimant within 180 days after the end of the 90 day notice period, as set forth in the regulations, or after receipt of the properly filed Proof of Claim, whichever is later, whether the claim is allowed in whole or retained for further review. The notice shall be in writing and shall be mailed to the Claimant by certified mail, return receipt requested, and by regular mail with a certificate of mailing.

Subpart C—Procedure for Review of Claims Retained for Further Review

§ 575.12 Special Representative and Claims Counsel.

The Role of the Special Representative and Claims Counsel:

(a) The Special Representative shall be the decisionmaker, and the Claims Counsel shall provide legal advice to the Special Representative. The Special Representative, in his discretion, may assign the tasks of review of claims to Claims Counsel or to other agents of the Special Representative, subject to the oversight and direction of the Director, Operations and Liquidation Division, OFSLIC, with the advice and consent of the General Counsel.

(b) In exercising this discretion, the Special Representative shall consider:

(1) The nature of the task;

(2) The issues involved in the claim; and

(3) Where no significant legal issue is presented, the cost-savings involved in assigning to a non-attorney agent of the Special Representative those tasks, such as preparing and forwarding notices to the Claimant, that do not require an attorney or that can be performed by a non-attorney at the direction and under the supervision of Claims Counsel.

(c) References to the Special Representative in the provisions of § 575.13, "Elements of review," therefore, include such agents of the Special Representative.

§ 575.13 Elements of review.

(a) Upon assignment, an agent of the Special Representative shall review promptly the Proof of Claim and documentation submitted by the Claimant in support of the claim and determine whether additional documentation or other writings or materials are necessary to reach a determination with respect to the claims.

(b) In connection with the compiling of such documentation, the Special Representative may require the claimant to provide additional information or documentation in support of the claim. Specifically, the Special Representative may:

(1) Notify the Claimant in writing to file with the Receiver, within 30 days, additional documentation or written information if, in the opinion of the Special Representative, it appears that such additional documentation or other written information would assist in the determination of the claim;

(2) Notify the claimant to make available for inspection and copying any relevant, non-privileged documents or

written information in the custody of or subject to the control of the claimant or his agent at a reasonable time, upon reasonable notice, and at the Receiver's expense;

(3) Notify the claimant to file with the Receiver within 30 days a sworn written response to written questions posed on behalf of the Receiver ("response to written questions").

(c) The Special Representative may, at a reasonable time after reasonable notice, review documents or other written information relevant to the claim in the custody of or subject to the control of any person or entity, including the writing from any persons including the claimant or his employees, and may obtain sworn statements in which statements, documents or other writings shall be made part of the Receiver's record. In connection with the gathering of this documentation or information, the Special Representative may require the Claimant to make such documentation or information available to the Special Representative or to assist or cooperate with the Special Representative in obtaining it.

(d) The Special Representative shall, upon the request of a Claimant provide an opportunity, at a reasonable time after reasonable notice to the Special Representative, to inspect and copy at the Claimant's expense any non-privileged documents or other written information relevant to the claim that are in the custody of or subject to the control of the Receiver.

(1) All requests to inspect or to copy such documents shall be in writing, shall be specific, shall not request materials already in the possession of or otherwise available to the Claimant, and shall be framed so as to avoid undue burden or expense to the Receiver.

(2) A written request that fails to comply with such requirements shall be subject to denial by the Special Representative.

(3) The Special Representative may defer response to document requests until it has decided whether to retain the claim for further review. The Special Representative may decide to deny a document request from a Claimant if it determines to allow the claim in whole.

(e) The Special Representative may grant requests by a Claimant to appear before an agent of the Special Representative, or may require Claimants to appear before an agent of the Special Representative, to give statements, or to discuss the claim or documentation.

(f) The Special Representative or his agent, subject to the approval of the Special Representative, may negotiate compromises or settlements of claims. Claimant's oral statements shall be reduced to writing, sworn to, and made a part of the Receiver's record. Statements by Claimants and Receiver's Representatives and their agents made during settlement discussions and in written communications for purposes of settlement shall not be part of the Receiver's Record and shall be treated in accordance with Federal Rule of Evidence 408.

(g) The Special Representative may require the Claimant in writing to submit a memorandum addressing legal issues the resolution of which would assist in the determination of the claim ("request for memorandum"). The request for memorandum shall be mailed to the Claimant by certified mail, return receipt requested, and regular mail with a certificate of mailing, and shall advise the Claimant that the memorandum shall be filed with the Receiver no later than 30 days after the date of mailing of the request for memorandum. The request for memorandum, return receipt, certificate of mailing, and any memorandum filed by the Claimant shall be made a part of the Receiver's record.

(h) The Special Representative shall inform the Claimant in writing that the Special Representative, in his sole discretion, may disallow in whole or in part any claim in the event the Claimant fails:

(1) To provide to the Special Representative, as requested and within the time period specified, the additional documentation or written information, responses to written questions, or memorandum;

(2) To make available for inspection and copying any non-privileged documents in the Claimant's custody or subject to the Claimant's control; or

(3) To appear and give a sworn statement upon notice by the Special Representative.

(i) The Special Representative shall compile a Receiver's record consisting of: The Proof(s) of Claim, all documents or other writings and sowrn written statements submitted by or obtained from the Claimant or his agent; all sworn statements and documents or other writings obtained from persons or entities other than the Claimant, and all documents or other writings in the custody or subject to the control of the Special Representative which, in the opinion of the Special Representative, are relevant to the claim; and all notices from the Special Representative to the Claimant.

(j) After compiling the Receiver's record, the Special Representative shall notify the Claimant in writing of the compilation of the record ("notice of record"). The notice of record shall itemize, in the form of an index, those documents, statements, and other writings that are to be made a part of the record and shall advise the Claimant to provide the Receiver with any additional documents, statements, written information or other writings for inclusion in the record within 30 days of the date of the mailing of the notice of record. The Special Representative shall mail the notice of record by certified mail, return receipt requested, and by regular first class mail and execute a certificate of mailing. Thereafter, the Special Representative shall prepare the Receiver's record, which shall include the documents as described in the index, the notice of record, and any additional documents provided by the Claimant in response to the notice of record. The Receiver's record will be made available to the Claimant, at a reasonable time and upon reasonable notice, for inspection and copying at the Claimant's expense.

(k) Claims Counsel shall consult with the Special Representative and provide such confidential, privileged legal advice as may be necessary to assist the Special Representative to reach a proposed determination with respect to the claim.

(l) After evaluating the information contained in the Receiver's record, the Special Representative shall promptly prepare a memorandum presenting and analyzing the legal and factual issues raised by the claim, and recommending a proposed determination ("proposed determination memorandum"). The Special Representative also shall prepare a proposed determination of claim in the form of proposed findings of fact and conclusions of law ("proposed determination").

(m) It is anticipated that the Special Representative may assign to Claims Counsel the task of providing legal advice regarding the elements of the claim including assistance in drafting the proposed determination and proposed determination memorandum. In that event, Claims Counsel shall prepare and submit the proposed determination and proposed determination memorandum to the Special Representative for review, comments, changes or adoption. In the event the Special Representative requires changes to be made in the proposed determination or proposed determination memorandum, Claims Counsel shall make such changes and the revised notice of proposed determination and proposed determination memorandum once adopted shall supersede the prior proposed determination and

memorandum. Upon adoption by the Special Representative, the proposed determination memorandum and the proposed determination shall be made a part of the Receiver's record. The superseded proposed determination and memorandum shall not be made a part of the Receiver's record.

(n) The Special Representative shall promptly mail the proposed determination to the Claimant by certified mail, return receipt requested, and regular first class mail, and execute a certificate of mailing.

(o) If the Claimant does not file a request for reconsideration as specified in paragraph (p) of this section, the proposed determination shall constitute the Receiver's Determination, and the Special Representative shall notify the Claimant in writing of his right to obtain review of the Receiver's Determination by the Bank Board, in accordance with the applicable regulations and procedures. The notice shall state that such review by the Bank Board is a prerequisite to obtaining judicial review.

(p) The proposed determination shall advise the Claimant of his right to file with the Receiver, within 30 days from the date of mailing of the notice, a written request for reconsideration ("request for reconsideration").

(1) The request for reconsideration shall state the specific grounds for any objection to proposed findings of fact or conclusions of law and may present proposed alternative findings of fact and conclusions of law. The request for reconsideration should present more than mere conclusory objections to proposed findings of fact or conclusions of law.

(2) If the Claimant does not object to a proposed finding of fact or conclusion of law in the request for reconsideration, such fact or conclusion shall be conclusively established against the Claimant.

(3) If the request for reconsideration is not timely filed with the Receiver, any objections to the proposed findings of fact and conclusions of law, in the absence of an extension of time by the Special Representative or a showing of good cause, may be deemed to be waived by the Claimant.

(4) The Special Representative shall promptly reply in writing to the request for reconsideration ("Special Representative's reply"). The Special Representative's reply will state whether the Special Representative agrees or disagrees with the contentions contained in the request for reconsideration and explain modifications, if any, recommended by the Special Representative to the proposed determination. The Special Representative's reply will be mailed to the Claimant by the Special Representative by certified mail, return receipt requested, and regular mail with a certificate of mailing.

(5) The request for reconsideration and the Special Representative's reply shall become part of the Receiver's record.

(6) After considering the Receiver's record, the Receiver will issue a determination on the claim ("Receiver's Determination"), signed on behalf of the Receiver by the Special Representative, in the form of findings of fact and conclusions of law.

(q) The Special Representative will promptly mail to the Claimant by certified mail, return receipt requested, and by regular mail with a certificate of mailing, the Receiver's Determination and a statement of the Claimant's right to obtain review of the Receiver's Determination by the Bank Board. The statement shall inform the Claimant that requesting such review by the Bank Board is a prerequisite to obtaining judicial review, and shall enclose a copy of the procedures for obtaining review. The Receiver's Determination and the executed return receipt, if any, will be made a part of the Receiver's record, whereupon the Receiver's Record, which is the basis for any Request for Review to the Bank Board will be deemed closed.

(r) The Special Representative shall maintain the Receiver's record in the office of the Receiver of the duration of the receivership and for a period of six (6) months following termination of the receivership by the Bank Board upon the conclusion of the final audit.

(s) The Receiver shall issue to the Claimant a "Record of Claim" stating the amount of any claim recognized, in whole or in part, and shall maintain a copy of the Record of Claim for processing with other valid claims according to its respective priority.

§ 575.14 Claims on an expedited basis.

A Claimant may make a written request to the Receiver that a claim be processed on an expedited basis. The burden shall rest upon the Claimant to establish good cause for expedited processing of a claim. The standard for good cause shown shall be substantial harm to the Claimant in the absence of expedited processing. It shall be in the sole discretion of the Receiver whether to direct that a claim be accorded expedited processing. The Receiver shall notify the Claimant in writing, by certified mail, return receipt requested, and regular mail with a certificate of mailing, of his decision on the request, and in the event the request is granted, the schedule for such expedited processing.

Subpart D—Standards for Determination of Claims

§ 575.15 Burden of proof.

The burden of proof shall rest upon the Claimant to establish the claim by a preponderance of the evidence. Preponderance of the evidence means evidence that when fairly considered produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition thereto.

§ 575.16 Exclusion from claims procedure.

A proof of claim need not be filed for certain administrative expenses of the association enumerated in § 575.17 of this part, and for employee wage claims of $3,000.00 or less.

§ 575.17 Application of claims procedure.

(a) Administrative expenses of the association and employee wage/benefit claims are claims and thus are subject to the requirements of the claims procedure except as provided in § 575.2 (h)(1)(iv), (v) of this part.

(b) Services or material providers and association employees shall be provided with Proof of Claim forms to submit to the Receiver to obtain payment of administrative expenses of the association and appropriate employee wage/benefit claims.

(c) Federal law preempts any state law that directs prompt payment of employees wages/benefits upon employment termination. The Special Representatives are urged to assure affected employees that their claims for wages/benefits will receive expeditious consideration.

§ 575.18 Criteria for the determination of claims for provision of services, supplies and materials.

No claim for provision of services and supplies and materials shall be allowed in full in the absence of:

(a) Evidence that the services, supplies or materials were provided in good condition or at an acceptable market or professional level.

(b) Evidence that the services, supplies or materials were provided on the dates and in the quantities as claimed.

(c) Evidence that the charges or fees are based upon actual services rendered or materials provided and are commensurate with the appropriate geographical market, professional, or trade standards for the services or

materials provided on the applicable dates.

(d) Evidence that any payments already made on a claim by the Association or the Receiver have been deducted from the claim set out in the Proof of Claim filed with the Receiver.

(e) A determination by the Special Representative that there is pending no judicial or other proceeding involving the claim and that there exists no judgment or other final determination in a proceeding on the claim.

(f) A determination made by the Special Representative that the Receiver does not have any set-off rights or counterclaims against the Claimant.

(g) A determination by the Special Representative that the claim does not appear to be fraudulent or otherwise reasonably suspect and thus should not be allowed.

§ 575.19 Claims to security, priority or preference.

With the exception of certain payments established and set out in the implementing Board Resolution or other orders or resolutions of the Board, which payments are to be made promptly and are excluded from requirements of the claims procedure, all claims to security, priority, or preference shall be claims retained for further review within the claims procedure. This will afford the Special Representative the opportunity, in consultation with Claims Counsel, to determine whether the Receiver has a basis or grounds upon which to challenge the granting of a security interest in receivership estate assets. Secured Claimants who require a decision upon their claims more rapidly than the 180 days provided for initial review should file a request as specified in Subpart C, § 575.14 of this part, explaining how a delay in decision could cause them harm.

PART 576—PROCEDURES FOR THE PROCESSING AND DETERMINATION ON REVIEW OF DETERMINATIONS OF THE FSLIC AS RECEIVER

Sec.

576.1 Purpose.
576.2 Notice of right to file a Request for Review.
576.3 Filing of a Request for Review.
576.4 Content of Request for Review.
576.5 Basis for Board Decision.
576.6 Burden of proof.
576.7 Issuance of Decision.
576.8 Decision in writing.
576.9 Denial of claim.
576.10 Requests for extension of time or waiver of other procedural requirements.
576.11 Satisfaction of claim certificate.
576.12 Procedural questions.

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); 48 Stat. 132, as amended (12 U.S.C. 1464); 48 Stat. 1259, as amended (12 U.S.C. 1729).

§ 576.1 Purpose.

The following procedures will be used for the processing and determination on review of determinations of the Federal Savings and Loan Insurance Corporation ("FSLIC") as Receiver.

§ 576.2 Notice to right ot file a Request for Review.

Claims denied in whole or in part by the FSLIC as Receiver are subject to review by the Federal Home Loan Bank Board ("Bank Board") upon timely filing of a Request for Review. Should the FSLIC as Receiver deny the claim in whole or in part, the parties will be so notified in writing and this notice will explain the right to review before the Bank Board and include a copy of the review procedures. All Requests for Review must comply strictly with the procedures outlined in this Part 576. Failure to comply with these procedures may result in dismissal of the Request for Review.

§ 576.3 Filing of a Request for Review.

(a) A Request for Review of a Receiver's Determination must be filed within 60 calendar days from the date indicated on the notice of determination that the claim has been disallowed in whole or in part.

(b) All Requests for Review are deemed to be filed when received and date/time stamped by the Bank Board.

(c) A Request for Review (original and 1 copy) must be filed with the Bank Board at the following address: Federal Home Loan Bank Board, Office of General Counsel, Adjudication Division, Docket Clerk, 1700 G Street NW., Washington, DC 20552.

The Request must include a signed statement certifying that a copy has been mailed or hand delivered to the Receiver.

(d) All submissions (*i.e.*, the Request, Response, and all other related filings) must include an original and 1 copy as well as a signed statement certifying that a copy has been sent to the opposing party(ies) and any other interested party. Failure to comply with this requirement may result in the return of the filing as incomplete and could adversely affect the party's rights to proceed.

(e) The Receiver shall provide the Bank Board, within 10 days of receipt of the Request for Review, with a copy of the Receiver's record of the proceeding, which has been deemed by the Receiver to be complete, true, and correct. The Receiver may, within the same time period, file a Response to the Request for Review, which shall be served upon the Requestor.

(f) The Receiver shall make available to the Requestor, or any interested party, during normal business hours (9 a.m. to 5 p.m. Monday through Friday, excluding Federal holidays), at the offices of the Receiver's representative, the opportunity to review the Receiver's record of the proceeding. At the request of any Requestor or interested party, the Receiver shall provide copies of the Receiver's record. The costs of duplication shall be borne by the party requesting the copies.

(g) A Request for Review must be filed within the time provided under this section. Failure to file a Request for review within the time period provided under this section constitutes waiver of any objection to the Receiver's Determination. A timely Request filed with the Bank Board in accordance with these procedures is mandatory to obtain judicial review of the Receiver's determination. Any part of the Receiver's Determination that the Request for Review does not contest shall not later be the subject of judicial review.

§ 576.4 Content of Request for Review.

(a) To be deemed complete a Request for Review must include:

(1) A clear and concise statement of the facts and arguments on which the Request is based;

(2) A clear and concise statement of the alleged factual and legal errors in the Receiver's Determination, including citations to applicable statutes, regulations, and legal authority, and to the Receiver's record; and

(3) If the Request is based on facts not available to the Receiver at the time of issuance of the Receiver's Determination, a separate identification and statement of all such facts upon which the Request is based.

(b) The Bank Board anticipates that in most cases a preliminary review of the Request and the Receiver's record will be made within 60 days of the date that the Receiver's record was received. At that time, the parties will be notified in writing that:

(1) The Administrative Record is complete and is closed; or

(2) More information is needed (in which case further instructions will be included); or

(3) The Bank Board anticipates that an additional 30, 60 or 90 days may be necessary before preliminary review can be completed.

§ 576.5 Basis for Board Decision.

(a) The Administrative Record that forms the basis of the Bank Board's Decision generally consists of the Request for Review, the Receiver's Record, and any Response to the Request for Review submitted by the Receiver or other interested party(ies).

(b) Any materials in addition to those in paragraph (a) of this section may be admitted to the Administrative Record only upon an Order of the Bank Board to allow supplementation of the Administrative Record. Any party may, by motion, request leave to supplement the record; however, such motions will be granted only upon a showing of good cause. A finding of good cause by the Bank Board generally requires that the moving party demonstrate that the argument, documentation, information, or evidence sought to be admitted or considered was not readily available when the claim was before the Receiver's representatative; or that the submission was made to, but improperly excluded by, the Receiver's representative; or some similar compelling reason why the submission was not included in the Receiver's Record.

(c) A motion for leave to supplement the record made after the party's initial submission of a Request for Review or Response, must be supported by good cause demonstrating why the supplemental matter could not have been included with the initial submission.

(d) Upon a finding by the Bank Board that the record provides a sufficient basis for rendering a Decision, the record will be closed. The parties will be notified by the Bank Board of the closing of the record.

(e) The Bank Board may make its own findings of fact and conclusions of law based upon the Administrative Record.

§ 576.6 Burden of proof.

The burden of proof rests at all times with the Requestor.

§ 576.7 Issuance of Decision.

Within 180 days from the date the record is closed, the Bank Board will issue a Decision on the merits of the Request, determining the extent of entitlement to the claim or any portion thereof. Alternatively, within 30 days from the date that the record is closed, the Bank Board, in its sole discretion or based upon the advice or request of the General Counsel, may entertain oral argument, or other supplementary proceedings, in which case a Decision will be issued within 180 days of the completion of such supplementary proceedings.

§ 576.8 Decision in writing.

The Bank Board's Decision will be issued in writing. It will set forth the reasons for the Decision and will constitute final agency action for the purpose of seeking judicial review.

§ 576.9 Denial of claim.

If no Decision is issued by the Bank Board within the time frame specified in § 576.7 of this part, and the Bank Board has not given notice to the parties requesting review that the Bank Board has in its discretion extended the time limit on its own motion, the Receiver's Determination will become the Decision of the Bank Board. This Decision will be final agency action for the purpose of seeking judicial review.

§ 576.10 Requests for extension of time or waiver of other procedural requirements.

Failure to comply with any procedural requirements set forth in this Part may result in dismissal of the Request for Review. However, reasonable requests for extensions of time or waiver of other procedural requirements may be granted upon a showing of good cause.

§ 576.11 Satisfaction of claim certificate.

(a) If the Bank Board determines that the claim, or any portion of the claim, is to be allowed, Claimants must, to secure payment, promptly execute and deliver to the Bank Board a "Satisfaction of Claim" certificate, which will be provided to the Claimant with the Decision.

(b) If the Bank Board determines that only a portion of a claim is allowable, the "Satisfaction of Claim" certificate will specify the portion found allowable. A claim or any portion of a claim not specifically allowed by the Bank Board is deemed denied and constitutes a final agency action for purposes of seeking judicial review.

§ 576.12 Procedural questions.

Any questions concerning the procedures outlined in Part 576 may be addressed, in writing, to: Adjudication Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

PART 577—PROCEDURES FOR THE ADMINISTRATION AND DETERMINATION OF REQUESTS FOR EXPEDITED RELIEF FROM DECISIONS OR THREATENED ACTIONS OF THE FSLIC AS RECEIVER

Sec.
577.1 Purpose.
577.2 How to file a Request for Expedited Relief.
577.3 Content of Request for Expedited Relief.
577.4 Decision.
577.5 Requests for extension of time or waiver of other procedural requirements.

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); 48 Stat. 132, as amended (12 U.S.C. 1464); 48 Stat. 1259, as amended (12 U.S.C. 1729).

§ 577.1 Purpose.

Requests for Expedited Relief seek extraordinary intervention by the Federal Home Loan Bank Board ("Bank Board") with respect to the Federal Savings and Loan Insurance Corporation (FSLIC) as Receiver. All Requests will be scrutinized for strict compliance with the procedural requirements set forth in Part 577. Failure to comply with these requirements may result in denial of the expedited relief requested.

§ 577.2 How to file a Request for Expedited Relief.

(a) These procedures must be complied with fully and within the prescribed time periods. Any noncompliance or lateness may result in denial of the Request unless a waiver of procedure or an extension of time has been granted for good cause shown. These procedures are fully applicable to the FSLIC as Receiver.

(b) Any decision or threatened action by the FSLIC as Receiver may be the subject of a Request for Expedited Relief seeking extraordinary intervention by the Bank Board outside of the routine claims process. Requests for Expedited Relief must be filed within five work days from the date of the notice of FSLIC as Receiver's decision or threatened action. All Requests for Expedited Relief are deemed to be filed when received and date/time stamped by the Bank Board at the office specified in paragraph (d) of this section. When notice of such a decision or threatened action is delivered by mail, three additional work days will be allowed for the filing of the Request.

Example: A notice of foreclosure is a "threatened action" by the FSLIC as Receiver. If the FSLIC as Receiver issues a notice of foreclosure letter dated January 1, of a foreclosure sale scheduled for February 1, the Request for Expedited Relief must reach the Bank Board and be date-time stamped within five work days of January 1. If the FSLIC as Receiver's notice was delivered by U.S. mail, the Request for Expedited Relief must reach the Bank Board and be date/time stamped within eight work days of January 1. Work days are Monday through Friday, excluding weekends and Federal holidays.

(c) All submissions are deemed to be filed when received, and date/time stamped by the Federal Home Loan

Bank Board at the office specified in paragraph (d) of this section.

(d) The original and one copy of the Request for Expedited Relief, and any supporting documents, must be filed with: Federal Home Loan Bank Board, Office of General Counsel, Adjudication Division, Docket Clerk, 1700 G Street NW., Washington, DC 20552.

(e) A copy of the Request for Expedited Relief, and any supporting documents, must be mailed or hand delivered to the Receiver at the following address(es):

(Receiver's address)

(f) All submissions to the Bank Board must include a signed statement certifying that an additional copy has been sent or hand delivered to the FSLIC as Receiver on the date the submission was filed with the Bank Board at the address(es) listed in paragraph (e) of this section.

§ 577.3 Content of Request for Expedited Relief.

(a) A Request for Expedited Relief does not involve a determination on the merits of a claim. It is solely a request to the Bank Board to intercede by instructing the FSLIC as Receiver to do or to refrain from doing some act. Accordingly, to obtain the relief requested, the Request for Expedited Relief must contain the following:

(1) A clear and concise statement of the facts and issues on which the Request is based;

(2) A clear and concise statement of any alleged factual and/or legal errors or omissions made by the FSLIC as Receiver;

(3) Citations to applicable statutes, regulations or other legal authority;

(4) All relevant documentation that supports the Request;

(5) An assessment of the likelihood of success on the merits of the underlying claim;

(6) A clear and concise statement of the probable imminent and irreparable harm likely to occur if expedited relief is not granted; and

(7) A signed statement certifying that the FSLIC as Receiver has been mailed or hand delivered a copy of the Request on the same day that the Request was filed with the Bank Board.

(b) The FSLIC as Receiver shall file its Response and all supporting documentation within five (5) work days from the date a Request for Expedited Relief is filed with the Bank Board. The time limitations discussed above with regard to delivery by U.S. mail are also applicable to the FSLIC as Receiver. The Receiver's Response shall contain legal and factual arguments in opposition to the Request for Expedited Relief. A copy of that Response and all supporting documentation must be sent or hand delivered to the party requesting expedited relief and the Receiver must certify that it has done so.

(c) The Request for Expedited Relief, the supporting documentation, as well as the Receiver's Response and supporting documentation, will form the basis for the administrative record on which the Bank Board will make its determination.

§ 577.4 Decision.

(a) The party requesting expedited relief shall be known as the Petitioner.

(b) The burden of proving entitlement to expedited relief rests at all times with the Petitioner.

(c) Upon receipt, the Request for Expedited Relief will be reviewed to assure compliance with all procedural requirements. If the Request is procedurally deficient it may be dismissed and the parties will be so notified.

(d) If the Request is properly filed and is a matter capable of resolution and no additional information is needed, a Decision on the Request will be issued by the Bank Board as soon as practicable. It will state the reasons for the determination and will constitute final agency action for purposes of securing judicial review.

(e) If additional information is required for resolution of the Request, notification in writing will be made by the Bank Board of the need for such information. The Bank Board will order that the information be submitted by a date certain. If no further information is needed for resolution of the Request, a Decision will be issued by the Bank Board as soon as practicable.

(f) Unauthorized supplemental pleading will not be considered by the Bank Board in the absence of good cause shown. To show good cause for an otherwise unauthorized supplemental pleading, a party must demonstrate the existence of new and material evidence that was not readily available at the time of the initial filing despite the party's due diligence.

(g) If appropriate, the Bank Board may, upon motion of a party or its own motion, issue an Order instructing the FSLIC as Receiver to stay temporarily its threatened action or decision pending resolution of the Request for Expedited Relief. Such Order will be granted where necessary to maintain the status quo for the time required for the Bank Board to consider the Request for Expedited Relief. The issuance of such an Order does not, however, prohibit the FSLIC as Receiver from making any preparations legally required in advance of its threatened action (*e.g.*, reposting foreclosure). Any such stay will remain in full force and effect for a period of time sufficient to enable the party requesting relief to be provided with the Bank Board's Decision and an opportunity to seek judicial review of that Decision. Such time will be at least five (5) work days from the date of the Decision where delivery of the Bank Board's Decision is by express (overnight) delivery service and eight (8) work days if by certified or regular U.S. mail.

§ 577.5 Requests for extension of time or waiver of other procedural requirements.

Failure to comply with any of the procedural requirements set forth in this Part 577 herein may result in denial of the Request for Expedited Relief. However, reasonable requests for extensions of time or waiver of other procedural requirements may be granted upon a showing of good cause.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

Protest and Appeals Procedures Concerning Determinations of Social and Economic Disadvantaged Status as a Condition of Eligibility

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to establish procedures governing protests of the social and economic disadvantaged status of certain small businesses and appeals of SBA's determinations of such status. These procedures would apply to certifications of disadvantaged status for purposes of the Defense Department's (DoD's) Small Disadvantaged Business Set-Asides and Small Disadvantaged Business Evaluation Preferences, authorized under section 1207 of Pub. L. 99-661, the Subcontracting Program authorized by section 8(d) of the Small Business Act and for any other Federal procurement program, excluding SBA's section 8(a) program, which requires SBA to determine social and economic disadvantage as a condition of eligibility.

DATES: SBA invites public comment on these procedures. Such comments must

be received on or before July 8, 1988 to ensure their consideration in formulating a final rule.

ADDRESS: Interested parties should submit written comments to: Francisco Marrero, Director, Office of Program Eligibility, Office of Minority Small Business and Capital Ownership Development, U.S. Small Business Administration, Room 618, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jane Palsgrove Butler, Deputy Director, Office of Program Eligibility, (202) 658–6813.

SUPPLEMENTARY INFORMATION: Section 1207(a) of the National Defense Authorization Act for Fiscal Year 1987, Pub. L. 99–661, set a goal that 5 percent of the total combined Department of Defense (DoD) obligations (i.e., procurement; research, development, test and evaluation; construction; and, operation and maintenance) for contracts and subcontracts awarded during fiscal years 1987, 1988 and 1989 be entered into with (1) small disadvantaged business (SDB) concerns, (2) historically Black colleges and universities, and (3) minority institutions. It defines SDBs in accordance with the provisions of section 8(d) of the Small Business Act [15 U.S.C. 636(d)]. For the purpose of achieving the 5 percent goal, section 1207 of Pub. L. 99–661 authorizes the use of SDB set-asides and SDB price preferences, which permit an SDB to receive a contract as the low bidder if its bid price is up to 10 percent higher than the next non-SDB bidder's price. In DoD's implementing regulations, published in interim form on May 4, 1987 (52 FR 16263) and February 19, 1988 (53 FR 5114), DoD defers to SBA to decide protests and appeals of small disadvantaged status.

These rules would establish the procedures for SBA's handling of protests and appeals of disadvantaged status related to SDB set-asides and SDB evaluation preferences, the subcontracting program authorized under section 8(d) of the Small Business Act and other Federal procurement programs, excluding SBA's 8(a) program, which require SBA to determine disadvantaged status.

This rule proposes to establish a new Subpart B of Part 124, entitled "Disadvantaged Status Protest and Appeal Procedures." This rule would also redesignate the existing Part 124 as Subpart A, entitled "Section 8(a) and Section 7(j) Programs."

The following discussion identifies and explains key provisions in this proposed procedural rule. Section 124.601 would describe in general terms the purpose of Subpart B. This subpart would set forth the procedures to be used whenever SBA is asked to make a determination whether a particular concern is "disadvantaged" for purposes of the DoD's SDB set-asides and SDB evaluation preferences, SBA's section 8(d) subcontracting program, and any other Federal contracting program, except SBA's section 8(a) program, which requires SBA's determination of "disadvantaged" status.

In Subpart B, SBA would define small disadvantaged business (SDB) in accordance with section 8(d) of the Small Business Act [15 U.S.C. sec. 636(d)], as required by Public Law 99–661, and would define social and economic disadvantage for purposes of section 8(d) by adopting the section 8(a) program definitions of such terms found in §§ 124.105 and 124.106 of this part. Under section 8(d) a contracting officer shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act. In addition, SBA's definition of SDB would implement the requirement of Public Law 99–661 that the majority of the earnings of an SDB must accrue to the socially and economically disadvantaged individuals associated with the concern. This rule would pertain only to protests of disadvantaged status. Protests and appeals relating to the size of the disadvantaged concern are governed by the procedures set forth in Part 121 of this Title. Regulations pertaining to aspects of the section 8(d) program other than protests of disadvantaged status are set forth at § 125.9 of this Title.

Section 124.602 would set forth definitions of terms found in Subpart B of this part. Small Disadvantaged Business (SDB) would be defined as required by section 1207(a) of Public Law 99–661. Some terms, such as social disadvantage, would be defined with reference to Subpart A of this part to clarify that SBA is proposing to use section 8(a) definitions for purposes of protests and appeals of disadvantaged business status.

Section 124.603 would identify those individuals who have standing to bring protests. This section would permit SDB protests to be filed in connection with any specific SDB set-aside requirement or any requirement for which an SDB is the apparent low bidder as a result of having invoked its SDB evaluation preference. Such protests could be brought by any concern submitting an offer for the requirement, by the contracting officer, or by the SBA. This section would also provide that protests in connection with an 8(d) subcontract could be brought by the procuring activity contracting officer or by SBA. Any other interested small business subcontractor or the prime contractor would be permitted to submit information to the contracting officer to persuade the contracting officer to initiate a protest, but the interested subcontractor or the prime contractor would not be permitted to initiate a protest directly. A protest of disadvantaged business status for other Federal procurement programs which require SBA to determine social and economic disadvantage, specifically excluding SBA's section 8(a) program, could be filed by the Federal agency official responsible for determining program eligibility (generally the contracting officer), SBA or any other interested party. SBA determines social and economic disadvantage as a condition of program participation for every concern admitted to the section 8(a) program. Such determinations are not subject to protest.

Section 124.604 would establish SBA's Director of the Office of Program Eligibility (OPE) as the individual empowered to determine whether a protested concern is disadvantaged.

Section 124.605 would require all protests, except those brought by the contracting officer or SBA, to be filed with the contracting officer. It also would require protests brought by the contracting officer or SBA to be referred directly to the SBA Office of Program Eligibility. This section would establish the time frames under which protests must be filed in order to be considered timely. For protests relating to SDB set-asides or SDB evaluation preferences which are brought by a concern submitting an offer for the requirement, the protest would be required to be received by the contracting officer prior to the cost of business on the fifth business day after bid opening for sealed bids, or after the receipt from the contracting officer of notification of the identity of the prospective awardee in negotiated acquisitions. If the protesting concern were to provide oral notice to the contracting officer within the five-day period, the protest would be considered timely if the contracting officer receives a confirming letter postmarked no later than one day after the date of the oral protest. For 8(d) protests brought by an interested party to be considered timely, it would be required to be received by the

contracting officer prior to the completion of performance by the intended 8(d) subcontractor. For SDB set-asides, SDB evaluation preference and 8(d) purposes, a protest by the contracting officer or SBA would be considered timely whenever it is filed. Protests, in connection with any procurement, which are filed by any person before bid opening or notification of intended award would be considered untimely and returned to the protestor without action. This section would list the supporting materials which should be provided to SBA in connection with any protest. It would also require the contracting officer to refer to SBA all protests received in a timely fashion.

Section 124.606 would establish the grounds for protests of disadvantaged status and would define social and economic disadvantage. Public Law 99-661 adopts the provisions of section 8(d) of the Small Business Act and implementing regulations of such section which requires the contracting officer to presume social and economic disadvantage for Black Americans, Hispanic Americans (individuals whose ancestry and culture are rooted in South America, Central America, Mexico, Cuba, Dominican Republic, Puerto Rico, Spain or Portugal), Native Americans (American Indians, Eskimos, Aleuts or Native Hawaiians), Asian Pacific Americans (individuals with origins from Japan, China, Phillipines, Vietnam, Korea, Samoa, Guam, U.S. Territory of the Pacific Islands, Northern Mariana Islands, Cambodia or Taiwan), Subcontinent Asian Americans (individuals with origins from India, Pakistan, Bangladesh or Sri Lanka) as well as for current section 8(a) program participants. Individuals who the contracting officer or prime contractor could not presume to be socially and economically disadvantaged by virtue of group membership or section 8(a) program participation would be required to establish social and economic disadvantage in accordance with the provisions of section 8(a) of the Small Business Act, and the implementing regulations, 13 CFR Part 124, Subpart A. This section would also set forth a requirement that a protest regarding social disadvantage must demonstrate that the protested concern is not actually owned and controlled by one or more socially disadvantaged individuals, or that the individuals who own and control the protested firm have not been subjected to, or have overcome racial or ethnic prejudice or cultural bias. The section would require that protests challenging economic disadvantage must demonstrate that the protested concern is not owned and controlled by one or more economically disadvantaged individuals.

Section 124.607 would state that no specific form is required for a protest but that the protest must be sufficiently specific to provide reasonable notice as to the ground(s) upon which it is based and to call into question the disadvantaged status of the protested concern. However, this section would require a contracting officer to forward all timely protests regardless of their specificity. Contracting officers would not be authorized to dismiss protests for lack of specificity. Such protests could be dismissed only by SBA. Such dismissal could be appealed pursuant to § 124.610 of this part.

Section 124.608 would require SBA to notify the protestor, the contracting officer and the protested concern that a protest has been received, the date the protest was received, and whether the protest will be considered or dismissed for lack of specificity. This section would also authorize the Director of OPE to request that the protested concern submit any documentation necessary to make a determination of disadvantaged status, and would require a protested concern to return the requested documents within 10 days. In addition, this section would provide procedures for a concern currently particiapting in the 8(a) program, or a concern which has been found by SBA in connection with a protest under this Part to be disadvantaged within the previous six months to certify by sworn statement that its status has not changed since 8(a) certification or the disadvantaged status determination, and would allow this certification to substitute for the submission of completely new documents.

Section 124.609 would establish a 15-day time period during which SBA must make a status determination, would authorize SBA to make a summary finding of non-disadvantaged status when a protested concern fails to return the required documents in a timely manner, and would establish the procedures to be followed after the withdrawal of a protest. This section would also set forth the materials which would be considered in a disadvantaged status determination. The section would further provide the procedures for notification to the contracting officer, protestor and protested concern.

This section would describe the basis for a determination of disadvantaged status by SBA for those firms which are not currently in the section 8(a) program or which have not been determined to be disadvantaged by SBA in the preceding 6 month period. SBA would compile a protest record in such cases and would base its determination solely on the documentation found in the record. The protest record would consist of documents provided by the protestor, protested concern, SBA and others. Depending on the issue protested, SBA could request that further documentation be submitted and/or could incorporate some of its files into the protest record. This section would clarify that, regardless of the grounds stated in the protest, SBA would examine each aspect of the disadvantaged business status, including allocation of the company's earnings, ownership and control as well as social and economic disadvantage.

In addition, the section would set forth the impact of a determination by SBA that the firm is not a disadvantaged business. In such circumstances, this section would provide that the concern previously found not to be disadvantaged could certify itself as disadvantaged for future SDB set-asides, SDB evaluation preferences, section 8(d) subcontracts, and certain other Federal procurement programs provided that it has overcome or changed the circumstances which caused this determination. This section would further require that the contracting officer shall treat such certification as a protest of the concern's disadvantaged status and forward it to SBA for a new determination. If a firm which is an 8(a) program participant were found not to be disadvantaged, such determination would not terminate the concern's 8(a) program participation. However, such determination would cause SBA to initiate 8(a) Program termination proceedings in accordance with the provisions of § 124.112 of this part. Finally, the section would delineate those actions which would be construed as a misrepresentation status.

Section 124.610 would set forth procedures for appealing a determination by the Director of OPE, and would name the Associate Administrator for Minority Small Business and Capital Ownership Development as the deciding official for such appeals. This section would also specify the grounds under which an appeal could be brought, and would provide that additional information or changed circumstances would not be considered in the appeal process. Finally, this section would provide that the decision of the AA/MSB&COD would be the final decision of SBA. SBA would be required to provide a copy of the final decision to the protested

concern, the contracting officer and the protestor, to the extent permitted by the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

In cases where the contract performance has begun and the AA/MSB&COD reverses the decision of the Director of SBA's Office of Program Eligibility, such reversal would not apply to the instant SDB acquisition or other procurement requirement to which the protest relates, but would apply to that concern for purposes of its future certification of SDB status.

Compliance With the Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

Regulatory Flexibility Act

This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. Section 601 *et seq.* Section 603 of the Regulatory Flexibility Act requires an agency to prepare a regulatory flexibility analysis whenever the agency is required by Section 553 of the Administrative Procedure Act (5 U.S.C. § 553) to publish a notice of proposed rulemaking. This rule is exempted from such requirements by 5 U.S.C. 553(b)(A) because it would establish SBA procedures for challenging disadvantaged status.

Executive Order 12291

SBA certifies that this proposed rule is not a major rule for purposes of Executive Order 12291. The rule, if adopted in final form, would set forth agency procedures for determining disadvantaged status. Utilization of and compliance with such procedures is not expected to entail significant costs and would not approach an annual economic impact of $100 million.

Paperwork Reduction Act

SBA certifies that this proposed rule would not impose any new reporting or recordkeeping requirements for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. SBA forms 1010A, 1010B, and 413, appearing in § 124.606, have been approved by the the Office of Management and Budget under control numbers 3243–0015, 3245–0015, and 3245–0188, respectively.

List of Subjects in 13 CFR Part 124

Administrative practice and procedure, Government procurement, Minority business. Reporting and recordkeeping requirements, Technical assistance.

Accordingly, as authorized by sections 5(b)(6), 8(a) and 8(d) of the Small Business Act [15 U.S.C. sections 634(b)(6), 636(a) and 636(d)], SBA hereby proposes to amend 13 CFR Part 124 as follows:

PART 124—[AMENDED]

1. The authority citation is proposed to be revised to read:

Authority: 15 U.S.C. 634(b)(6), 637(a), 637(d). Public Law 99–661 [Section 1207].

2. The title of Part 124 is proposed to be revised to read "Minority Small Business and Capital Ownership Development/Small Disadvantaged Business Status Protest and Appeal Procedures."

3. Sections 124.1 through 124.503 are proposed to be redesignated as Subpart A, entitled "Section 8(a) and Section 7(j) Programs".

4. New Subpart B (consisting of §§ 124.601 through 124.610), entitled "Disadvantaged Business Status Protest and Appeal Procedures" is proposed to be added as follows:

Subpart B—Disadvantaged Business Status Protest and Appeal Procedures

Sec.

124.601 Introduction.
124.602 General definitions.
124.603 Who may protest the disadvantaged status of a concern.
124.604 Who makes disadvantaged status determinations.
124.605 Protest procedures.
124.606 Grounds of protest.
124.607 Form and specificity of protest.
124.608 Notification of protest.
124.609 Making the disadvantaged status determination.
124.610 Appeals of disadvantaged status determinations.

Subpart B—Disadvantaged Business Status Protest and Appeal Procedures

§ 124.601 Introduction.

(a) This subpart sets forth the procedures to be used whenever the SBA is asked to make a determination as to whether a particular concern is "disadvantaged" for purposes of Department of Defense's (DoD's) Small Disadvantaged Business (SDB) set-aside contracts and SDB evaluation preferences, authorized by section 1207 of the National Defense Authorization Act for Fiscal Year 1987, Pub. L. 99–661, SBA's section 8(d) subcontracting program, and any other Federal procurement program requiring SBA to determine social and economic disadvantage as a condition for eligibility. These procedures are separate and distinct from those governing size protests and appeals.

(b) In determining the disadvantaged status of a protested concern, the SBA shall utilize the definitions of social and economic disadvantage and other eligibility requirements established in Subpart A of Part 124 of this title for the SBA's section 8(a) program, including the requirements placed on ownership and control. In addition, for purposes of SDB set-asides and SDB evaluation preferences only, there is the additional requirement that the majority of the earnings of the concern directly accrue to the disadvantaged individual who owns and controls it. SBA shall apply these definitions in accordance with the presumption contained in section 8(d) of the Small Business Act [15 U.S.C. 636(d)].

(c) All protests relating to whether a concern is a "small" business for purposes of any Federal program requiring such a condition for eligibility, including SDB set-asides and SDB evaluation preferences, are to be filed pursuant to the procedures set forth in § 121.9 of these regulations. The rules contained in Part 121 apply to all such size determinations. For purposes of SDB set-asides, SDB evaluation preferences and the section 8(a) subcontracting program, the size standard contained in the solicitation is the applicable size standard for the requirement. An appeal of such a size determination may be made pursuant to § 121.11 of these regulations.

§ 124.602 General definitions.

Appeal. A request for re-examination of the initial SBA determination regarding a protest.

Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD). The SBA official who is responsible for appeals of disadvantaged status.

Control See § 124.104, Title 13, CFR.

Current Section 8(a) Program Participant. Any business concern which is approved for participation in the section 8(a) program as of the date of the concern's Representations and Certifications on the contract at issue.

Economic Disadvantage. See § 124.106, Title 13, CFR.

Office of Program Eligibility (OPE). The SBA office within the Office of Minority Small Busniess and Capital Ownership Development which is responsible for making determinations regarding protests of disadvantaged status.

Ownership. See § 124.103, Title 13, CFR.

Protest. An initial challenge of the disadvantaged status of a business concern.

Small Disadvantaged Business (SDB) Concern. A business concern, including

mass media, (1) which is small as defined pursuant to section (3) of the Small Business Act and implementing regulations at 13 CFR Part 121; (2) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals as defined by §§ 124.105 and 124.106, Title 13, CFR; or in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; (3) which has the majority of its earnings accruing directly to such individuals; and (4) whose management and daily business operations are controlled by one or more of such individuals.

Social Disadvantage. See § 124.105, Title 13, CFR.

§ 124.603 Who may protest the disadvantaged status of a concern.

(a) In connection with a specific SDB set-aside requirement or a requirement for which the apparent low bidder is an SDB which has invoked its SDB evaluation preference, the following entities may protest the disadvanteaged stastus of a concern which is the apparent low responsible offeror:

(1) Any other concern which submitted an offer for that requirement;

(2) The procuring agency contracting officer; and

(3) The Small Business Administration.

(b) In connection with an 8(d) subcontract, the procuring agency contacting officer or SBA may protest the disadvantaged status of a proposed subcontractor. Other small business subcontractors and the prime contractor may submit information to the contracting officer in an effort to persuade the contracting officer to initiate a protest.

(c) Protests of disadvantaged status relating to other Federal procurement programs, excluding SBA's section 8(a) program, which require SBA to determine social and economic disadvantaged as a condition of eligibility, may be filed by the Federal agency official responsible for determining program eligibility, and any other interested party.

§ 124.604 Who makes disadvantaged status determinations.

In response to a protest challenging the disadvantaged status of a concern, the SBA's Director of the Office of Program Eligibility (OPE) in the Office of Minority Small Buisiness and Capital Ownership Development (MSB&COD) shall determine whether the concern is disadvantaged.

§ 124.605 Protest procedures.

(a) *Filing.* (1) Except in cases where the contracting officer of SBA initiates a protest, all protests shall be directed to the procuring agency contracting officer responsible for the particular requirement.

(2) In cases where the contracting officer initiates a protest, he/she shall file the protest with SBA in accordance with paragraph (c) of this section and shall provide notification in accordance with § 124.608 of this part.

(3) In cases where SBA initiates a protest, the protest shall be referred to the Office of Program Eligiblity within the Office of MSB&COD and notification shall be provided in accordance with § 124.608 of this part.

(b) *Timeliness of Protest)*(1) *SDB Set-aside and SDB Evaluation of Preference Protests.*—(i) *Written SDB Set-Aside Protest.* In order for a written protest submitted by a business concern in connection with a specific SDB set-aside requirement to be considered timely, it must be received by the contracting officer prior to the close of business on the fifth day, exclusive of Saturdays, Sundays, and legal holidays, after the bid opening date for sealed bids, or after the receipt from the contracting officer of notification of the identity of the prospective awardee in negotiated acquisitions.

(ii) *Written SDB Evaluation Preference Protest.* In order for a protest by a business concern to be timely when challenging the SDB status of an apparent low bidder which has invoked its SDB evaluation preference, it must be received by the contracting officer prior to the close of business on the fifth day, exclusive of Saturdays, Sundays and legal holidays, after the receipt from the contracting officer of notification of the prospective awardee

(iii) *Oral Protests.* A protest for SDB set-asides or SDB evaluation preferences shall also be considered timely if made orally to the contracting officer with the allotted 5-day period, and the contracting officer thereafter receives a confirming letter postmarked no later than one calendar day after the date of such telephone protest.

(iv) A protest by the contracting officer or SBA shall be timely for the purpose of the SDB acquisition in question whether filed before or after award.

(v) A protest received after the time limits set forth above shall not be considered.

(2) *Section 8(d) Protests.* (i) In order for a protest in connection with an 8(d) subcontract to be considered timely, it must be received by the contracting officer prior to the completion of performance by the intended 8(d) subcontractor.

(ii) A protest received after subcontract performance by the intended 8(d) subcontractor shall not be considered.

(3) Protests, in connection with any procurement, which are filed by any person before bid opening or notification of intended award, whichever applies, shall be considered premature and shall not be forwarded to SBA, but shall be returned to the protestor without action.

(c) *Referral to SBA.* (1) Any contracting officer who receives a timely protest shall promptly forward such protest to the SBA's Director of the Office of Program Eligibility, Office of Minority Small Business and Capital Ownership Development, 1441 L Street NW., Washington, DC 20416.

(2) When a contracting officer receives a protest and refers it to the SBA, such referral shall contain the following:

(i) The protest and any accompanying materials;

(ii) The date on which the protest was received and a determination as to timeliness;

(iii) A copy of the protested concern's self-certification as to disadvantaged status; and

(iv) The date of bid opening or the date notification of the apparent successful efferor was sent to all unsuccessful offerors, as applicable.

(3) A protest by a Federal agency in connection with a procurement program requiring SBA to determine social and economic disadvantage as a condition of eligibility shall be accompanied by any materials in the possession of the agency which cause it to question the disadvantaged status of the concern.

§ 124.606 Ground of protest

(a) Protests challenging the social disadvantage of the protested concern must demonstrate that the protested concern is not owned and controlled by one or more socialy disadvantaged individuals as defined by Subpart A of this part. A protest could challenge the social disadvantage of the protested concern by submitting evidence that:

(i) The individuals who own and control the protested concern have not been subjected to, or have overcome racial or ethnic prejudice or cultural bias, or

(ii) The individuals associated with the protested concern who could be considered socially disadvantaged do not actually own and control the protested concern.

(b) Protests challenging the economic disadvantage of the protested concern must demonstrate that the protested concern is not owned and controlled by one or more economically disadvantaged individuals as defined in Subpart A of this part.

§ 124.607 Form and specificity of protest.

(a) No specific form is required for a protest under this subpart.

(b) A protest must be sufficiently specific to provide reasonable notice as to the ground(s) upon which the protested concerns's disadvantaged status is challenged and to call into question the disadvantaged status of the protected concern. A protest merely alleging that the protested concern is not disadvantaged, without setting forth any basis for the allegation, will not be deemed to specify adequate grounds for the protest. Some basis for the belief stated in the protest must be given. However, the contracting officer shall forward all protests received to SBA for a decision on whether to pursue the determination of disadvantaged status.

(c) Protests which do not contain sufficient specificity may be dismissed by the SBA.

(d) A dismissal by the Director of OPE of a protest for lack of specifity may be appealed to SBA's AA/MSB&COD pursuant to § 124.609 of these regulations.

§ 124.608 Notification of protest.

(a) Upon receipt of a protest challenging the disadvantaged status of a concern, the Director of OPE shall immediately notify the protestor and the contracting officer of the date such protest was received and whether it will be processed or dismissed for lack of specificity.

(b) In cases where the protest is sufficiently specific, the Director of OPE shall also immediately advise the protested concern of the receipt of the protest and forward to the protested concern a copy of the protest.

(1) In such cases, the Director of OPE is authorized to ask the protested concern to provide any or all the following information and documentation: a completed SBA Form 1010A, "Statement of Personal Eligibility" for each individual claiming disadvantaged status; a completed SBA Form 1010B, Statement of Business Eligibility;" a completed SBA Form 413, "Personal Financial Statement" for each individual claiming disadvantaged status; whether the protested concern, or any of its owner(s), officers or directors have applied for admission to or participated in the SBA's section 8(a) program and if so, the name of the company which applied for 8(a) participation and the date of the application; business tax returns for the last two completed fiscal years; personal tax returns for the last two years for all officers, directors and for any individual owning at least 5% of the business entity; business financial statements for the last two completed fiscal years; articles of incorporation, corporate by-laws, or partnership agreements, as appropriate; and any other information which the Director of OPE deems necessary to permit a determination as to the social and/or economic disadvantaged status of the protested concern.

(2) Unless the protest presents specific information which would call into question the veracity of the application documents filed by a current participation in SBA's section 8(a) program, such a concern may submit, in lieu of the information specified in paragraph (b)(1) of this section, a sworn affidavit by its owner, managing partner, President or Chief Executive Officer that the 8(a) application and any amendments thereto remain accurate, and that circumstances concerning the ownership and control of the business have not changed since the application. If the ownership and/or control of the business have changed since the date of the 8(a) application, the protested concern must comply with paragraph (b)(1) of this section.

(3) In cases where a concern's disadvantaged status has been protested and upheld by SBA within the preceding six months, the concern may submit in lieu of the information specified in paragraph (b)(1) of this section, a sworn affidavit by its owner, managing partner, President or Chief Executive Officer stating that the circumstances concerning the ownership and control of the business have not changed since SBA's determination of social and economic disadvantage. If the ownership and/or control of the business have changed since the date of SBA's determination of social and economic disadvantage, the protested concern must comply with paragraph (b)(1) of this section.

(4) Notwithstanding the exceptions in paragraph (b)(2) and (3) of the section, the Director of OPE is authorized to request any document which he/she deems necessary to determine disadvantaged status.

(c) Within 10 working days of the date that notification of the protest was received from the Director of OPE, the protested concern must deliver to the Director of OPE by hand or by mail the information and documentation requested pursuant to paragraph (b)(1) of this section. Materials submitted by mail must be received by the close of business on the 10th working day.

§ 124.609 Making the disadvantaged status determination.

(a) *General.* The Director of OPE shall make a disadvantaged status determination within 15 working days after receipt of a protest challenging such status, or as soon thereafter as possible. If, in connection with an SDB acquisition or other procurement requirement, the SBA cannot make such a determination within 15 working days, the Director of OPE shall inform the contracting officer responsible for the particular requirement when a determination is expected to be made.

(b) *Time Limits for Response.* If the information and documentation requested by SBA under § 124.608(b) is not received by the Director of OPE within the 10-day period as required by § 124.608(c), SBA may determine the protested concern to be non-disadvantaged.

(c) *Withdrawal of Protest.* Once properly instituted by the filing of a specific disadvantaged status protest, the determination may be completed by the SBA even if the protest is withdrawn or the SDB acquisition or other procurement requirement in question is cancelled or awarded. The continuation of the disadvantaged status determination is discretionary with the SBA.

(d) *Basis for Determination.* (1) Except with respect to a concern which is a current participant in SBA's section 8(a) program or a concern authorized by § 124.608(b) of this Part to submit an affidavit concerning its disadvantaged status, the disadvantaged status determination shall be based on the protest record as supplied by the protestor, protested concern, SBA or others.

(2) If deemed necessary or appropriate, the SBA may make a part of the protest record information in its files and information submitted in response to requests to the protestor, the protested concern, the contracting officer, or other persons for additional specific information. The nature of the inquiry will dictate the type of documentation requested.

(3) In determining disadvantaged status, SBA shall review ownership and control of each protested firm as well as social and economic disadvantage regardless of the grounds specified in the protest.

(e) *Disadvantaged Status Determination.* The SBA shall base its disadvantaged status determination

upon the record, including reasonable inferences therefrom. SBA shall render a written determination including the basis for its findings and conclusions.

(f) *Summary Determination for Current 8(a) Participant or Concern Recently Determined by SBA to be Disadvantaged.* The SBA may summarily determine that a concern is socially and economically disadvantaged if that concern is a current participant in the SBA's section 8(a) program or has been determined by SBA to be disadvantaged within the previous 6 month period unless the protested concern cannot or fails to submit an affidavit authorized by § 124.608(b) of these regulations.

(g) *Notification of Determination.* After making its disadvantaged status determination, the SBA shall immediately notify the contracting officer, the protestor, and the protested concern of its determination. No later than one business day thereafter, SBA shall provide by certified mail, return receipt requested, a copy of its written determination to the protested concern and, consistent with the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552), to all other parties to the proceeding.

(h) *Results of an SBA Disadvantaged Status Determination.* (1) A disadvantaged status determination becomes effective immediately and remains in full force and effect unless and until reversed upon appeal by SBA's AA/MSB&COD pursuant to § 124.610 of this part.

(2) A concern which was determined to be non-disadvantaged may certify itself as a disadvantaged business for purposes of future SDB evaluation preferences, future SDB acquisitions, 8(d) subcontracts, and other Federal procurement programs requiring disadvantaged status as a condition for eligibility *provided* that it has a good faith belief that it has changed the conditions upon which the determination of non-disadvantaged status was based. At the time of such certification, the concern shall notify the contracting officer that it was previously determined to be non-disadvantaged. However, if such concern is the lowest responsive offeror for an SDB acquisition, or for any requirement by invoking its SDB evaluation preference, or is otherwise deemed eligible for a Federal procurement program requiring disadvantaged status as a condition for eligibility, the contracting officer shall treat such certification as a protest of the concern's disadvantaged status and shall forward it to SBA pursuant to § 124.605(c) of this part. SBA shall process a protest based on such certification in accordance with the provisions of this Part.

(3) If a current 8(a) participant is found to be non-disadvantaged as a result of failure to submit the affidavit permitted by § 124.608(b)(ii) of this part, the concern will be subject to the same certification and notice requirements specified in paragraph (i)(2) of this section. However, a determination of non-disadvantaged status will not automatically terminate the concern's 8(a) program participation. A hearing before an administrative law judge is required before a firm can be terminated from the 8(a) program, *see* § 124.112 of this part.

(i) *Misrepresentation of Disadvantaged Status.* (1) A concern which was determined to be non-disadvantaged and which has not overcome or changed the circumstances which caused this determination *cannot* certify itself to be disadvantaged for future SDB acquisitions, 8(d) subcontracts, and other Federal procurement programs requiring disadvantaged status as a condition for eligibility. A certification of disadvantaged status by such a firm may be deemed a misrepresentation of disadvantaged status.

(2) A concern which was previously determined to be non-disadvantaged and certifies, in good faith, that it is a disadvantaged business for a subsequent SDB acquisition, SDB evaluation preference, 8(d) subcontract, or other Federal procurement program requiring disadvantaged status as a condition for eligibility, must nevertheless inform the contracting officer that it previously had been determined by the SBA to be non-disadvantaged. Failure to advise the contracting officer of such a non-disadvantaged status determination by the SBA may be deemed a misrepresentation of disadvantaged status.

§ 124.610 Appeals of disadvantaged status determinations.

(a) Appeals to re-examine disadvantaged status determinations may be filed with the SBA's AA/MSB&COD by any of the following:

(1) The concern whose disadvantaged status was determined by the Director of OPE;

(2) The original protestor; and

(3) The procuring agency contracting officer responsible for the SDB acquisition or other procurement requirement in question.

(b) Notice of an appeal must be provided to the protested concern, the original protestor, and the procuring agency contracting officer responsible for the SDB acquisition or other procurement requirement in question.

(c)(1) An appeal must be in writing and must be received by the Associate Administrator for Minority Small Business and Capital Ownership Development, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416, no later than 5 working days after the date of receipt of such determination.

(2) An untimely appeal shall be dismissed.

(d) Grounds for Appeal. The SBA will re-examine a disadvantaged status determination only if there was a clear and significant administrative error in the processing of such decision, or if the Director of OPE completely failed to consider a significant fact contained within the materials supplied by the protestor or the protested concern. Disadvantaged status determinations shall not be re-examined based on additional information or changed circumstances which were not disclosed to the Director of OPE at the time of his/her decision.

(e) No specific form is required for the appeal. However, the appeal must identify the disadvantaged status determination for which a re-examination is sought, set forth a full and specific statement of the reasons as to why the disadvantaged status determination is alleged to erroneous pursuant to paragraph (d) of this section, and present arguments in support of such allegations.

(f) An appeal may proceed to completion even though an award of the SDB acquisition or other procurement requirement which prompted the initial protest has been made. In such a case, however, a reversal by the AA/MSB&COD shall not apply to the awarded SDB acquisition or other procurement requirement and shall have future effect only.

(g) The appeal will be decided by the AA/MSB&COD within 5 working days of its receipt, if practicable.

(h) The appeal decision shall be based on all the information and documentation in the record. A copy of the decision shall be provided to the protested concern and, to the extent consistent with the Privacy Act and the Freedom of Information Act, to all parties to the proceeding. Such decision shall be provided by certified mail, return receipt requested.

(i) The decision of the AA/MSB&COD is the final decision of the Small Business Administration.

Date: June 2, 1988.

James Abdnor,
Administrator.

[FR Doc. 88-12878 Filed 6-7-88; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-84-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-81, -82, -83, -87, and MD-88 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to revise an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas DC-9-80 and MD-88 series airplanes, that would have required the inspection and modification of the power feeder cable installation. This proposal revises the proposed rule by incorporating a redesigned line block in the power feeder cable installation, and expands the applicability to include additional airplanes. This action is taken as a result of a recent report of an APU generator power feeder cable electrically shorting to the airplane structure.

DATE: Comments must be received no later than July 15, 1988.

ADDRESS: Send commets on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No 87-NM-84-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr Alan T. Shinseki, Aerospace Engineer, Systems & Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-84-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the inspection and modification of the generator power feeder cable installation on certain McDonnell Douglas DC-9-80 series airplanes was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on September 9, 1987, (52 FR 33948). That action ws prompted by a report of an APU generator power feeder cable electrically shorting to the airplane structure. This condition, if not corrected, could result in a fire on board the airplane below the cabin floor.

In its comments to the proposal, the airplane manufacturer reported that repetitive inspections of known correct power feeder cable installations have revealed evidence of the trough and trough cover migrating from the below-floor clamp area to an area as far back as completely out of the floor transition hole. To ensure that the power feeder cables are adequately protected in the below-floor transition areas, the line block has been redesigned to incorporate a protective shield that will provide additional protection to the trough and trough cover installation at the transition areas.

The FAA has reviewed and approved McDonnell Douglas MD-80 Service Bulleting 24-100, dated March 30, 1988, which describes the modification instructions to install a redesigned line block with the power feeder cable installation on McDonnell Douglas Model DC-9-81, -82, -83, -87, and MD-88 series airplanes.

The FAA has determined that it is necessary to revise the Notice to propose installation of this redesigned line block in the power feeder cable installation in accordance with McDonnell Douglas MD-80 Service Bulleting 24-100, dated March 30, 1988. Additionally, the applicability of the proposed rule would be expanded to include additional affected airplane models. Since this action would expand the scope of the proposed AD, the comment period has been reopened to provide adequate time for public comment.

This supplement to the original Notice has been revised to remove all references to the use of "later FAA-approved revision of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the proposed AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph C.

It is estimated that 30 airplanes of U.S. registry would be affected by this AD, that it would take approximately 32 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The modification parts are being provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $384,000.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is

not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, McDonnell Douglas Model DC-9 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising the Notice of Proposed Rulemaking, Docket 87-NM-84-AD, published in the **Federal Register** on September 9, 1987 (52 FR 33948), as follows:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, -83, -87, and MD-88 airplanes, certificated in any category, as listed in McDonnell Douglas Model MD-80 Service Bulletins 24-94, Revision 1, dated May 28, 1987, and 24-100, dated March 30, 1988. Compliance required within 12 months after the effective date of this airworthiness directive (AD), unless previously accomplished.

To eliminate a potential source of fire ignition from the generator power feeder cable electrically shorting, accomplish the following:

A. For airplanes identified in McDonnell Douglas MD-80 Service Bulletin 24-94, Revision 1, dated May 28, 1987: Inspect for power feeder cable damage, and repair the cable, if necessary; then modify the cable installation, in accordance with the Accomplishment Instructions of that service bulletin.

B. For airplanes identified in McDonnell Douglas MD-80 Service Bulletin 24-100, dated March 30, 1988: Modify the power feeder cable installation in accordance with the Accomplishment Instructions of that service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification, Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on May 31, 1988.

Frederick M. Isasc,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-12846 Filed 6-7-88; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Exchange Recordkeeping Regarding Clearing Organizations' Trade Registers

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") requires exchange clearing organizations to maintainn a record regarding transactions on the exchange in futures and options contracts. As part of that requirement, each clearing organization's trade register must include for each futures or option transaction a customer type indicator. In light of the Commission's routine surveillance needs, as well as the increased number of special studies undertaken by the Commission regarding the trading of stock index futures and options on such futures contracts, the Commission is proposing to expand the required reporting of customer type indicators to include two specified categories of trades in these contracts, specifically index arbitrage and substitution transactions.

Although the Commission's existing reporting systems have worked well, the Commission believes that the proposed enhancements to exchange audit trail systems will greatly facilitate the compilation of accurate information concerning the execution times of trades involving index arbitrage and substitution transactions on an even more accurate and timely basis without resorting to as many special calls for information from traders or futures commission merchants.

DATE: Comments must be received by July 8, 1988.

ADDRESS: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 and should make reference to "Customer Type Indicator".

FOR FURTHER INFORMATION CONTACT: John Mielke, Associate Director or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254-3310 or 254-6990, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

Clearing organizations of commodity futures and option exchanges are required under the rules of the Commodity Futures Trading Commission ("Commission") to maintain a "trade register." Commission Rule 1.35 , 17 CFR 1.35 (1987). These records, along with others required to be maintained by futures commission merchants, introducing brokers and members of contract markets, memorialize the process by which customer orders are entered and executed on futures exchanges. This provides the Commission and the self-regulating exchanges with the ability to reconstruct the execution of trades on the basis of a written record.

The customer type indicator required under the Commission Rule 1.35(e), 17 CFR 135(e) (187), requires that the trade registers of exchange clearing organizations indicate the type of account for which each trade was effectuated. The customer type indicators include trading for a floor broker's own account (Type 1), trading for the floor broker's clearing member's house account (Type 2), trading for another member present on the exchange floor (Type 3), or trading for any other type of customer (Type 4).

This information has been used particularly by the exchanges and the Commission in analyzing potential trade practice abuses in the execution of trading orders.

In addition, the Commission and exchanges maintain large trader reporting systems for surveillance purposes. See, 17 CFR Parts 17 and 18 (1987). The Commission's large-trader reporting system tracks large positions in all futures markets. Option large trader reports are provided to the Commission through the exchanges. See, 17 CFR Part 16 (1987). Thus, the Commission's large trader reporting system enables it to follow and anaylze on a day-to-day basis the current large positions in all futures and option markets. This reporting system further enables the Commission to study and analyze market positions after-the-fact. In this regard, the database generated from the large trader reporting system has been particularly useful in connection with the Commission's studies of trading in various contract markets.

In conducting special studies of trading in certain stock index futures and options on futures contracts on particular days, the Commission has relied upon its larger trader reports in conjunction with requests to, and the inspection of books and records of, particular traders or futures commission merchants for additional or confirming information and has shared these data with the Securities and Exchange Commission. The CFTC believes that further studies and analyses of these markets likely will be undertaken in the future. Although the Commission's existing reporting systems have worked well, the Commission believes that the proposed enhancements to exchange audit trail systems will greatly facilitate the compilation of accurate information concerning the execution times of trades involving index arbitrage and substitution transactions on an even more accurate and timely basis without resorting to as many special calls for information from traders or futures commission merchants. Thus, the Commission is proposing to add two additional customer type indicators that must be specified on the clearing organization's trade register.

By collecting such information, however, the Commission is in no way expressing or implying the view that index arbitrage or substitution transactions are in any way suspect. To the contrary, the Commission has stated its belief that such transactions are economically beneficial by linking more closely the cash and futures or option markets. Indeed, such arbitrage and susbstitution trading serves to increase the efficiency of the markets, benefitting all users of the markets. Rather, the Commission's determination to require this information reflects its desire to increase the accuracy and timeliness of these data, enabling it better to reconstruct and analyze the working of the markets.

II. The Proposed Rules

The Commission is proposing under new Commission Rule 1.3(rr) to define index arbitrage or index substitution transactions as a trading strategy through which offsetting trades—purchases in one market and sales in the other that are of approximately equal magnitude and are executed nearly simultaneously—are made in stock index futures, or options on those futures, and a portfolio of stocks based on a perceived price discrepancy between the two markets. Index substitution is a form of index arbitrage in which an institution sells a basket of stocks from its portfolio and purchases an equivalent amount of stock index futures contracts or options on those futures in response to a perceived price discrepancy between the two markets. Further, as proposed, the trade register of clearing organizations would be required to reflect by customer-type-indicator ("CTI") trades for a clearing member's house accounts to effect index arbitrage or substitution transactions (Type 5) and trades for any other type of futures or option customer to effect an index arbitrage or substitution transaction (Type 6). It should be noted that proposed CTIs 5 and 6 are in lieu of CTIs 2 and 4. That is, where trading effectuates index arbitrage or substitution transactions in stock index futures or options on such futures, CTI 2 and 4 no longer would be used. All other transactions continue to be identified as they are currently. Consistent with their current responsibilities under Rule 1.35, the exchanges and the clearing members would be required effectively to monitor the accuracy of their reporting.

Finally, the Commission notes that those positions which are made by a member for an omnibus account of a second clearing or non-clearing member, futures, commission merchant or foreign broker must indicate the customer-type-indicator code for the customer for whom the trade ultimately was executed. Accordingly, the proposed rule clarifies that a clearing member or futures commission merchant could not treat all positions traded through an affiliated firm simply as the customer omnibus or house omnibus positions of that firm. In this connection, the Commission specifically requests comment as to when and under what circumstances, if ever, omnibus account trades would involve portions of the transaction for different ultimate customers that would require different CTIs. Should any such situation be identified, the Commission further invites comments as to the proposed treatment, for CTI purposes, of such transactions.

III. Other Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") 5 U.S.C. 601 *et seq.* requires that agencies, in proposing rules, consider the impact of these rules on small entities. These proposed rules add two categories of customer type indicator which are required to be recorded on the trade register of the clearing association of an exchange. The Commission has previously determined that exchanges and their clearing associations are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). Accordingly, if promulgated, these rules would have no significant impact on a substantial number of small entities. For the above reason, and pursuant to § 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission in particular invites comments from any firms or other persons which believes the promulgation of these amendments might have a significant impact upon their activities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, (PRA) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget. The Commission has determined that because the proposed rules merely modify existing codes which currently must be reported, the proposed rules will not cause an increase in the paperwork burden. Nor do the proposed rules duplicate any other reporting requirement..

Persons wishing to comment on the information which would be required by these proposed rules should contact

Robert Neal, Office of Management and Budget (OMB), Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to the OMB are available from Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 1

Clearing associations, definitions, exchanges, reporting requirements, trade register, records.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(11), 4c, 4g, 5, 5a, and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 4a(j), 6c, 6g, 7, 7a, and 12a(5), the Commodity Futures Trading Commission hereby proposes to amend Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7, 8, 9, 12, 12a, 12c, 13a–1, 16, 19, 21, 23 and 24.

2. Section 1.3 is proposed to be amended by adding a paragraph (tt) to read as follows:

§ 1.3 Definitions.

* * * * *

(tt) *Index arbitrage and substitution transactions.* This term means a trading strategy through which offsetting trades-purchases in one market and sales in the other that are of approximately equal magnitude and are executed nearly simultaneously—are made in stock index futures, or options on those futures, and a portfolio of stocks based on a perceived price discrepancy between the two markets. Index substitution is a form of index arbitrage in which an institution sells a basket of stocks from its portfolio and purchases an equivalent amount of stock index futures contracts or options on those futures in response to a perceived price discrepancy between the two markets.

3. Section 1.35(e) is proposed to be revised to read as follows:

§ 1.35 Records of cash commodity, futures, and option transactions.

* * * * *

(e) *Contract markets.* Each contract market shall maintain or cause to be maintained by its clearing organization a single record which shall show for each futures or option trade, including those made by a member for an omnibus account of another clearing member, futures commission merchant or foreign broker: the transaction date, time (as described in paragraph (g) of this section), quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call, strike price, floor broker or floor trader buying, clearing member buying, floor broker or floor trader selling, clearing member selling, and the appropriate symbol from below indicating the buying and selling customer or option customer types. The customer and option customer type indicator shall show, with respect to each executed trade, whether that activity was:

Activity	Customer type indicator
Trading for the floor trader's own account	1
Trading for the house account of the floor broker's clearing member:	
To effect an index arbitrage or substitution transaction as defined in section 1.3(rr) of this Chapter, or	5
For any other reason	2
Trading by the floor broker for another member present on the exchange floor, or an account controlled by such member; or	3
Trading for any other type of customer or option customer:	
To effect an index arbitrage or substitution transaction as defined in section 1.3(rr) of this Chapter	6
For any other reason	4

The record required by this paragraph (e) shall also show, by appropriate and uniform symbols, any transaction which is made non-competitively in accordance with written rules of the contract market which have been submitted to and approved by the Commission in accordance with the provisions of § 1.38, and trades cleared on dates other than the date of execution. Except as otherwise approved by the Commission for good cause shown, the record required by this paragraph (e) shall be maintained in a format and coding structure approved by the Commission (1) in hard copy or on microfilm as specified in § 1.31 and (2) for 60 days in computer-readable form on compatible tapes or discs.

* * * * *

Issued in Washington, DC this *1st* day of June, 1988, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 88–12848 Filed 6–7–88; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Temporary Placement of N,N-Dimethylamphetamine Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of intent to temporarily place N,N-dimethylamphetamine into Schedule I of the Controlled Substances Act (CSA) pursuant to the emergency scheduling provisions of the CSA (21 U.S.C. 811(h)). This intended action is based on a finding by the DEA Administrator that the scheduling of N,N-dimethylamphetamine in Scheudle I of the CSA is necessary to avoid an imminent hazard to the public safety. Finalization of this action will impose the criminal sanctions and regulatory controls of Schedule I on the manufacture, distribution and possession of N,N-dimethylamphetamine.

FOR FURTHER INFORMATION CONTACT: Howard McCain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), which was signed on October 12, 1984, amended section 201 of the Controlled Substances Act (CSA) (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA if he finds that such action is necessary to avoid an imminent hazard to the public safety. A substance may be temporarily scheduled under the emergency provision of the CSA if that substance if not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no approval or exemption in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of DEA by regulation (28 CFR 0.100). In making a finding that scheduling a substance temporarily in Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in section 201(c) of the

CSA (21 U.S.C. 811(c)). These factors are as follows:

(4) History and current pattern of abuse;

(5) The scope, duration and significance of abuse; and

(6) What, if any, risk there is to the public health.

House Report 98–835 which accompanied Pub. L. 98–473 states that "This new procedure (emergency scheduling) is intended by the committee to apply to what has been called 'designer drugs', new chemical analogs or variations of existing controlled substances, which have a psychedelic, stimulant or depressant effect and have a high potential for abuse." N,N-dimethylamphetamine is an analogue of amphetamine and methamphetamine, both of which are Schedule II stimulants with a high potential for abuse, and as such is the type of substance which Congress intended to be considered for emergency scheduling.

Chemically, N,N-dimethylamphetamine is N,N,alpha-trimethylbenzeneethanamine or N,N,aplha-trimethylphenethylamine. N,N-dimethylamphetamine also has been called N-methylmethamphetamine. It is prepared as the dextrorotatory isomer in clandestine laboratories from N-methylephedrine. It is usually found as the hydrochloride salt.

N,N-dimethylamphetamine belongs to the phenylispropylamine class of compounds. Many compounds within this structural class are abused for their central nervous system stimulant and/or hallucinogenic effects. N,N-dimethylamphetamine is an analogue of amphetamine and methamphetamine, both of which are potent central nervous system stimulants and substances with a high potential for abuse. N,N-dimethylamphetamine differs from amphetamine by having two methyl groups on the amine nitrogen; it differs from methamphetamine (N-methylamphetamine) by having one additional methyl group on the nitrogen. All three compounds contain those structural features consistent with the production of central nervous system stimulation, the most outstanding pharmacological feature of amphetamine and amphetamine-type drugs.

Available scientific data show that the know pharmacological effects of N,N-dimethylamphetamine are similar to those produced by amphetamine and methamphetamine. Studies in mice show that N,N-dimethylamphetamine increases spontaneous locomotor activity after intraperitoneal administration, an indication of central stimulant activity. Similar to methamphetamine, administration of N,N-dimethylamphetamine to rats and mice is associated with a significant long-term depletion of dopamine levels in the caudate nucleus. Based on the substantial structural similarity of N,N-dimethylamphetamine to amphetamine and methamphetamine and actual evidence of N,N-dimethylamphetamine's central nervous system stimulant activity in rodents, it is expected that N,N-dimethylamphetamine will behave as an amphetamine-like central nervous system stimulant in humans.

Forensic laboratories had reported the identification of N,N-dimethylamphetamine in drug evidence submissions infrequently in the late 1970's. With the increased illicit production of methamphetamine from ephedrine and the subsequent restrictions placed on the purchase of ephedrine in some areas, clandestine laboratory operators substituted N-methylephedrine for ephedrine in the methamphetamine synthesis. This modification of the synthetic process produces the controlled substance analogue, N,N-dimethylamphetamine. Since 1987, forensic laboratories in at least California, Alabama, Colorado, Iowa, Idaho, Utah and Florida have reported the identification of substantial quantities of N,N-dimethylamphetamine in drug evidence submissions. During that same time period, DEA has disrupted six clandestine laboratories manufacturing N,N-dimethylamphetamine in California. Capacities of the laboratories ranged up to several hundred pounds of N,N-dimethylamphetamine.

There have been no reports of deaths or injuries specifically attributed to the abuse of N,N-dimethylamphetamine as yet. It is likely that individuals abusing this substance do not know that they are taking N,N-dimethylamphetamine but think that they are taking methamphetamine. N,N-dimethylamphetamine has been sold and trafficked as methamphetamine or speed. Thus, any injuries or adverse effects associated with the use of N,N-dimethylamphetamine are likely to be reported as methamphetamaine or speed related incidents. N,N-dimethylamphetamine's structural similarity to methamphetamine and its central nervous system stimulant effect strongly suggest that abuse of this substance will lead to health and safety risks similar to those produced by amphetamine and methamphetamine. Since N,N-dimethylamphetamine is only manufactured in clandestine laboratories, there are additional risks associated with its abuse. The health and safety hazards associated with the abuse of amphetamine and methamphetamine are well established. According to national estimates of emergency room mentions from the Drug Abuse Warning Network (DAWN), there were over 5500 emergency room mentions associated with the use of methamphetamine and speed during the first nine months of 1987. Abuse of N,N-dimethylamphetamine is likely to cause similar types of emergency room episodes and may contribute to those attributed to methamphetamine.

The above data show that the continued, uncontrolled clandestine production, distribution and abuse of N,N-dimethylamphetamine will pose an imminent hazard to the public safety. DEA is unaware of any commercial manufacturer or supplier of N,N-dimethylamphetamine in the United States. DEA is also unaware of any recognized therapeutic use of this substance in the United States.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Administrator of DEA has considered the following factors relative to making a determination of whether temporarily scheduling N,N-dimethylamphetamine under the CSA is necessary to avoid an imminent hazard to the public safety:

(1) Its history and current pattern of abuse;

(2) The scope, duration and significance of abuse; and

(3) What, if any, risk there is to the public safety.

Based on a consideration of these factors and other relevant information, the Administrator, pursuant to section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, finds that scheduling N,N-dimethylamphetamine in Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

As required by section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)), the Administrator has notified the Secretary for Health, delegate of the Secretary of the Department of Health and Human Services, of his intention to termporarily place N,N-dimethylamphetamine into Schedule I of the CSA. Comments submitted by the Assistant Secretary for Health in response to this notification, including whether there is an exemption or approval in effect for N,N-dimethylamphetamine under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration before a final order is published. Because the Administrator finds that it is necessary to temporarily place N,N-dimethylamphetamine into Schedule I to avoid an imminent hazard to the public

safety, the final order, if issued, will be effective on the date of publication in the Federal Register. Further, it is the intention of the Administrator to issue such a final order as soon as possible after the expiration of thirty days from the date of publication of this proposal and the date that a notification has been transmitted to the Assistant Secretary of Health.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the temporary placement of N,N-dimethylamphetamine into Schedule I of the CSA will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). This action involves the temporary control of a substance with no legitimate medical use or manufacture in the United States.

It has been determined that the temporary placement of N,N-dimethylamphetamine into Schedule I of the CSA under the emergency scheduling provision is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), the Administrator hereby proposes that 21 CFR Part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Paragraph (g)(6) is added to § 1308.11 to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(6) N,N-dimethylamphetamine (Some other names: N,N,alpha-trimethylbenzene-ethanamine; N,N,alpha-trimethylphenethylamine), its salts, optical isomers and salts of optical isomers	1480

Dated: May 27, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-12842 Filed 6-7-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Kansas Permanent Regulatory Program

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

ACTION: Proposed rule.

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

The proposed amendments to the Kansas program eliminates the present Kansas Mined Land Conservation and Reclamation Board and transfers the Mined Land Office and its functions to the Kansas Department of Health and Environment.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments relating to Kansas' proposed modification of its program not received on or before 4:00 p.m. on July 8, 1988, will not necessarily be considered in the decision process. A public hearing on the adequacy of the amendments will be held upon request July 5, 1988. Any person interested in making an oral or written presentation at the public hearing should contact Mr. William J. Kovacic at the Kansas City Field Office by the close of business on or before June 23, 1988. If no one contacts Mr. Kovacic to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person contacts Mr. Kovacic, a public meeting may be held in place of the hearing. If possible, a notice of the meeting will be posted in advance at the locations listed under "ADDRESSES."

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic, Director, Kansas City Field Office. Copies of the Kansas program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the Kansas City Field Office, OSMRE Headquarters Office, and the Office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Kansas City Field Office.

Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240; Telephone: (202) 343-5492.

Mined Land Conservation & Reclamation Board, 107 West 11th Street, P.O. Box 1418, Pittsburg, Kansas 66762; Telephone: (316) 231-8615.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Kansas program on January 21, 1981 (46 FR 5892). Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kansas program can be found in the January 21, 1981 Federal Register (46 FR 5892). Subsequent actions concerning proposed amendments are codified at 30 CFR 916.12, 916.15, 916.16, and 916.20.

II. Submission of Amendments

On April 29, 1988 (Administrative Record No. KS-424) the State of Kansas submitted to OSMRE an amendment to its approved regulatory program. The proposed amendment (Kansas House Bill #3009) was signed by the Governor, with an effective date of July 1, 1988. However, the rule would not take effect for the purpose of the Kansas program until OSMRE had approved and published it as a final rule Federal Register notice. The proposed amendment eliminates the present

Kansas Mined Land Conservation and Reclamation Board and transfers the Mined Land Office and its functions to the Kansas Department of Health and Environment.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by Kansas satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Kansas program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than Kansas City, Missouri, will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. on June 23, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

A written statement should be filed at the time of the hearing to assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate response and appropriate questions.

The public hearing will continue on the specified date with all persons scheduled to comment being heard first, and those persons in the audience who wish to comment being heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 916

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

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date: May 27, 1988.

[FR Doc. 88-12893 Filed 6-7-88; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

36 CFR Part 327

Shoreline Management at Civil Works Projects

AGENCY: Army Corps of Engineers, DOD.

ACTION: Proposed rule.

SUMMARY: The rule provides policy and guidance on the management of shorelines of Corps of Engineers managed Civil Works water resource projects. This proposal is being made to incorporate changes deemed necessary to better meet new and changing conditions.

DATES: Comments must be submitted on or before 22 July 1988.

ADDRESS: Comments may be mailed to HQUSACE, CECW-ON, Washington, DC 20314-1000. Request written comments indicate the section or paragraph number the comment is addressing.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell E. Lewis, (202) 272-0247.

SUPPLEMENTARY INFORMATION: The changes to § 327.30 are necessary to clarify and strengthen the regulation for more effective management and to enhance the public enjoyment of Corps water resource development projects. Some portions of the regulation have been reworded and/or relocated to a different portion.

The name of § 327.30 is changed from Lakeshore Management to Shoreline Management. The title Lakeshore Management does not reflect the scope of the program. Shoreline Management does address the fact that all shorelines, lakes or rivers, are covered by this regulation. This more clearly allows its application to situations where the Corps holds fee simple title to the shoreline.

Section 327.30(d)(4). The emphasis on community docks is reduced.

Section 327.30(e)(4) requires each project Shoreline Management Plan to include a process to deal with activities which may be requested but not specifically addressed by the Shoreline Management Plan.

Section 327.30(e)(7) requires the poeriodic review of Shoreline Management plans to determine the need for update. When changes are needed, the plan will be formally updated through the public particpation process.

Section 327.30(h)(1) presents the requirements of section 6 of Pub. L. 97-140 as it applies to Shoreline Management.

Section 327.30(h)(2) presents the requirements of section 1134(d) of the Water Resources Development Act of 1986 (Pub. L. 99-662) as it applies to Shoreline Management.

Section 327.30(i) requires permitted facilities to be operated, used and maintained in a safe, healthful condition at all times.

Section 327.30(j) provides more detailed guidance on how to measure density of development.

Section 327.30(k). The schedule of fees Shoreline Management Permits will be published separately.

Section 327.30, Appendix A, paragraph 2.c(7) increases the emphasis on electrical service and equipment safety.

Section 327.30, Appendix A, paragraph 2.c(10)-(13) includes more detailed guidance on the issuance of vegetation modification permits.

List of Subjects in 36 CFR Part 327

Public lands, Water resources, Natural resources, Resource management.

Compliance With Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Army has determined that this document is not a major rule under E.O. 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.*).

Approved.

Pat M. Stevens IV,

Colonel, Corps of Engineers, Chief of Staff.

For the reasons set out in the preamble, the U.S. Army Corps of Engineers proposes to amend 36 CFR Part 327 as follows:

PART 327—[AMENDED]

1. The authority citation for Part 327 continues to read as follows:

Authority: Section 4, Act of December 22, 1944, 58 Stat. 889, as amended (16 U.S.C. 460d).

2. Section 327.30 is proposed to be amended by adding text and revising the section heading to read as follows:

§ 327.30 Shoreline management at civil works projects.

(a) *Purpose.* The purpose of this regulation is to provide policy and guidance on management of shorelines of Civil Works projects.

(b) *Applicability.* This regulation is applicable to all field operating agencies with Civil Works responsibilities. This regulation is not applicable to project lands when such application would result in an impingement upon existing Indian rights.

(c) *References.* (1) Section 4, 1944 Flood Control Act, as amended (16 U.S.C. 460d).

(2) Section 10, River and Harbor Act of 3 March 1899 (33 U.S.C. 403).

(3) National Historic Preservation Act of 1966 (Pub. L. 89-665; 80 Stat. 915) as amended (16 U.S.C. 470 *et seq.*).

(4) The National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

(5) The Clean Water Act (33 U.S.C. 1344, *et seq.*).

(6) The Water Resources Development Act of 1986 (Pub. L. 99-662).

(7) Title 36, Chapter III, Part 327, Code of Federal Regulations, "Rules and Regulations Governing Public Use of Water Resource Development Projects Administered by the Chief of Engineers."

(8) Executive Order 12088 (13 Oct 78).

(9) 33 CFR Parts 320-330, "Regulatory Programs of the Corps of Engineers."

(10) ER 1130-2-400, "Management of Natural Resources and Outdoor Recreation at Civil Works Water Resource Projects."

(11) EM 385-1-1, "Safety and Health Requirements Manual."

(d) *Policy.* (1) It is the policy of the Chief of Engineers to protect and manage shorelines of all Civil Works water resource development projects under Corps jurisdiction in a manner which will promote the safe and healthful use of these shorelines by the public while maintaining environmental safeguards to ensure a quality resource for use by the public. The objectives of all management actions will be to achieve a balance between permitted private uses and resource protection for general public use. Public pedestrian access to and exit from these shorelines shall be preserved. For projects or portions of projects where Federal real estate interest is limited to easement title only, management actions will be appropriate within the limits of the estate acquired.

(2) Private shoreline uses may be authorized in designated areas consistent with approved use allocations specified in Shoreline Management Plans. Private shoreline uses are not allowed on water resource projects where construction was initiated after 13 December 1974, or on water resource projects where no private shoreline uses existed as of that date. Any existing permitted facilities on these projects will be grandfathered until the facilities fail to meet the criteria set forth in § 327.30(h).

(3) A Shoreline Management Plan, as described in § 327.30(e), will be prepared for each Corps project where private shoreline use is allowed. This plan will honor past written commitments. The plan will be periodically reviewed and revised, as necessary. Shoreline uses that do not interfere with authorized project purposes, public safety concerns, or violate local norms should be allowed unless the public participation process identifies problems in thse areas. If sufficient demand exists, consideration should be given to revising the shoreline allocations (e.g. increases/decreases). Maximum public participation will be encouraged as set forth in § 327.30(e)(6). Shoreline management plans are not required for those projects where construction was initiated after 13 December 1974 or on projects not having private facilities as of that date. In that case, a statement of policy will be developed by the district commander to establish and present the shoreline management policy. This policy statement will be subject to the approval of the division commander. For projects where two or more agencies have jurisdiction, the plan will be cooperatively prepared with the Corps as coordinator.

(4) Where commercial or other public launching and/or moorage facilities are not available within a reasonable distance, group owned mooring facilities may be allowed in Limited Development Areas to limit the proliferation of individual facilities. Generally only one permit will be necessary for a group owned mooring facility with that entity, if incorporated, or with one person from the organization designated as the permittee and responsible for all moorage spaces within the facility. No charge may be made for use of any permitted facility by others nor shall any commercial activity be engaged in thereon.

(5) The issuance of a private shoreline use permit does not convey any real estate or personal property rights or exclusive use rights to the permit holder. The public's right of access and use of the permit area must be maintained and preserved. Owners of permitted facilities may take necessary precautions to protect their property from theft, vandalism or trespass, but may in no way preclude the public right of access to the water surface or public land adjacent to the facility.

(6) Shoreline use permits will only be issued to individuals or groups with contiguous private property or legal right of access to public lands.

(e) *Shoreline Management Plan.*—(1) *General.* The policies outlined in § 327.30(d) will be implemented through preparation of Shoreline Management Plans, where private shoreline use is allowed.

(2) *Preparation.* A Shoreline Management Plan is prepared as part of the Operational Management Plan. A moratorium on accepting applications for new permits may be placed in effect from the time an announcement of creation of a plan or formal revision of a plan is made until the action is completed.

(3) *Approval.* Approval of shoreline management plans rests with division commanders. After approval, one copy of each project Shoreline Management Plan will be forwarded to HQUSACE (CECW-ON) WASH DC 20314-1000. Copies of the approved plan will also be made available to the public.

(4) *Scope and Format.* The Shoreline Management Plan will consist of a map showing the shoreline allocated to the uses listed in paragraph e. below, related rules and regulations, a discussion of what areas are open or closed to specific activities and facilities, how to apply for permits and other information pertinent to the Corps management of the shoreline. The plan will be prepared in sufficient detail to ensure that it is clear to the public what uses are and are not allowed on the shoreline of the project and why. A process will be developed and presented in the Shoreline Management Plan that prescribes a procedure for review of activities requested but not specifically addressed by the Shoreline Management Plan.

(5) *Shoreline Allocation.* The entire shoreline will be allocated within the classifications below and delineated on a map. A map of sufficient size and scale to clearly display the shoreline allocation will be conspicuously displayed in the project administration office and will serve as the authoritative reference. Reduced or smaller scale maps may be developed for public dissemination but the information contained on these must be identical to

that contained on the display map in the project administration office. No changes will be made to these maps except through the formal update process. District commanders may add specific constraints and identify areas having unique characteristics in addition to the allocation classifications described below.

(i) *Limited Development Areas.* Limited Development Areas are those areas in which private facilities and/or activities may be allowed consistent with § 327.30(h) and Appendix A. Modification of vegetation by individuals is allowed only following the issuance of a permit in accordance with Appendix A. Potential low and high water conditions and underwater topography should be carefully evaluated before shoreline is allocated as Limited Development Area.

(ii) *Public Recreation Areas.* Public Recreation Areas are those areas designated for commercial concessionaire facilities, Federal, state or other similar public use. No private shoreline use facilities and/or activities will be permitted within or near designated or developed public recreation areas. The term "near" depends on the terrain, road system, and other local conditions, so actual distances must be established on a case by case basis in each project Shoreline Management Plan. No modification of land forms or vegetation by private individuals or groups of individuals is permitted in public recreation areas.

(iii) *Protected Shoreline Areas.* Protected Shoreline Areas are those areas designated to maintain or restore aesthetic, fish and wildlife, cultural, or other environmental values. Shoreline may also be so designated to protect unstable shoreline from erosion, to prevent development in areas that are subject to excessive siltation, rapid dewatering, or exposure to high wind, wave, or current action and/or in areas in which development would interfere with navigation. No shoreline use permits for floating recreation facilities will be allowed in protected areas. Some modification of vegetation by private individuals, such as clearing a narrow meandering path to the water, or limited mowing, may be allowed only if the district commander determines that the activity will not adversely impact the environment or physical characteristics for which the area was designated as protected.

(iv) *Prohibited Access Areas.* Prohibited Access Areas are those in which public access is not allowed or are restricted for safety or security reasons. These could include hazardous areas near dams, spillways, hydroelectric power stations, work areas, water intake structures, etc. No shoreline use permits will be issued in Prohibited Access Areas.

(6) *Public Participation.* District commanders will ensure public participation to the maximum practicable extent in Shoreline Management Plan formulation, preparation and subsequent revisions. This may be accomplished by public meetings, group workshops, open houses or other public involvement techniques. When master plan updates and preparation of the Shoreline Management Plans are concurrent, public participation may be combined and should consider all aspects of both plans, including shoreline allocation classifications. Public participation will begin during the initial formulation stage and must be broad-based to cover all aspects of public interest. The key to successful implementation is an early and continual public relations program. Projects with significant numbers of permits should consider developing computerized programs to facilitate exchange of information with permittees and to improve program efficiency. Special care will be taken to advise citizen and conservation organizations; Federal, state and local natural resource management agencies; the media; commercial concessionaries; congressional liaisons; adjacent landowners and other concerned entities as during the formulation of Shoreline Management Plans. Notices shall be published prior to public meetings to assure maximum public awareness. Public notices shall be issued by the district commander allowing for a minimum of 30 days for receipt of written public comment in regard to the proposed Shoreline Management Plan or any major revision thereto.

(7) *Periodic Review.* Shoreline Management Plans will be reviewed periodically by the district commander to determine the need for update. If sufficient controversy or demand exist, consideration should be given, consistent with other factors, to a process of reevaluation of the shoreline allocations and the plan. When changes to the Shoreline Management Plan are needed, the plan will be formally updated through the public participation process.

(f) *Instruments for Shoreline Use.* Instruments used to authorize private shoreline use facilities, activities or development are as follows:

(1) *Shoreline Use Permits.* (i) Shoreline Use Permits are issued and enforced in accordance with provisions of Title 36, Chapter III, § 327.19 of the Code of Federal Regulations, for private floating recreation facilities.

(ii) Shoreline Use Permits are required for private structures/activities of any kind (except boats) in waters of Civil Works projects whether or not such waters are deemed navigable and where such waters are under the primary jurisdiction of the Secretary of the Army and under the management of the Corps of Engineers.

(iii) Shoreline Use Permits may be issued for non-floating structures on waters deemed commercially non-navigable, when such waters are under management of the Corps of Engineers.

(iv) Shoreline Use Permits are also issued for land vegetation modification activities which do not involve disruption to land form.

(v) Permits should be issued for a term of five years. To reduce administration costs, one year permits should be issued only when the location or nature of the activity requires annual reissuance.

(vi) Shoreline Use Permits for erosion control may be issued for the life or period of continual ownership of the structure by the permittee and his/her legal spouse.

(2) *Department of the Army Permits.* Dredging, construction of fixed structures, including fills and combination fixed-floating structures and the discharge of dredged or fill material in waters of the United States will be evaluated under authority of section 10, River and Harbor Act of 3 March 1899 (33 U.S.C. 403) and section 404 of the Clean Water Act (33 U.S.C. 1344) in accordance with references (c)(2) and (c)(5).

(3) *Real Estate Instruments.* Commercial development activities and activities which involve grading, cuts, fills, or other changes in land form, or establishment of appropriate land-based support facilities required for private floating facilities, will continue to be covered by a lease, license or other legal grant issued through the appropriate real estate element. Shoreline Management Plans should identify the types of activities that require real estate instruments and indicate the general process for obtaining such permits.

(g) *Transfer of Permits.* Shoreline Use Permits are non-transferable. They become null and void upon sale or transfer of the permitted facility or the death of the permittee and his/her legal spouse.

(h) *Existing Facilities Now Under Permit.* Implementation of a Shoreline Management Plan shall consider existing permitted facilities and prior Corps commitments implicit in their issuance.

(1) Section 6 of Pub. L. 97–140 provides that no lawfully installed dock or appurtenant structures shall be required to be removed prior to 31 December 1989, from any Federal water resources reservoir or lake project administered by the Secretary of the Army, acting through the Chief of Engineers, on which it was located on 29 December 1981, if such property is maintained in usable condition, and does not occasion a threat to life or property.

(2) In accordance with section 1134(d) of Pub. L. 99–662, any houseboat, boathouse, floating cabin or lawfully installed dock or appurtenant structures in place under a valid shoreline use permit as of 17 November 1986 cannot be forced to be removed from any Federal water resources project or lake administered by the Secretary of the Army on or after 31 December 1989 if it meets the three conditions below except where necessary for immediate use for public purposes or higher public use or for a navigation or flood control project.

(i) Such property is maintained in a usable and safe condition,

(ii) Such property does not occasion a threat to life or property, and

(iii) The holder of the permit is in substantial compliance with the existing permit.

(3) All such floating structures and appurtenances will be formally recognized in an appropriate Shoreline Management Plan. Permits for these structures will be reissued to new owners. If the holder of the permit fails to substantially comply with the terms of the document, it may be revoked and the holder required to remove the structure, in accordance with the terms of the document as to notice, time, and appeal.

(i) *Facility Maintenance.* Permitted facilities must be operated, used and maintained by the permittee in a safe, healthful condition at all times. If determined to be unsafe, it will be corrected within 60 days or removed, at the permittee's expense. The applicable safety and health prescriptions in EM 385–1–1 should be used as a guide.

(j) *Density of Development.* The density of private floating recreation facilities will be established in the Shoreline Management Plan for all portions of Limited Development Areas consistent with ecological and aesthetic characteristics. The facility density in Limited Development Areas should, if feasible, be determined prior to the development of adjacent private property. The density of floating facilities will not be more than 50 percent of the Limited Development Area in which they are located. Density will be measured by determining the linear feet of shoreline as compared to the width of floating facilities plus associated moorage arrangements which restrict the full unobstructed use of that portion of the shoreline. When a Limited Development Area or a portion of a Limited Development Area reaches maximum density, notice should be given to the public and facility owners in that area that no additional floating facilities will be allowed. In all cases, sufficient open area will be maintained for safe maneuvering of watercraft. Docks should not extend out from the shore more than one-third of the width of a cove at normal recreation or multipurpose pool. In those cases where current density of development exceeds the density level established in the Shoreline Management Plan, the density will be reduced to the prescribed level through attrition or by employing more expeditious guidelines as necessary to protect the shoreline environment.

(k) *Permit Fees.* Fees will be collected for shoreline use permits in accordance with the provisions of reference 3a. The fee schedule will be published separately.

Appendix A to § 327.30—Guidelines for Granting Shoreline Use Permits

1. General

a. Decisions regarding permits for private floating recreation facilities will consider the operating objectives and physical characteristics of each project. In developing shoreline management plans, district commanders will give consideration to the effects of added private boat storage facilities on commercial concessions for that purpose. Consistent with established policies, new commercial concessions may be alternatives to additional limited development shoreline.

b. Permits for individually or group owned shoreline use facilities may be granted only in Limited Development Areas when the sites are not near commercial marine services and such use will not despoil the shoreline nor inhibit public use or enjoyment thereof. Charges will be made for Shoreline Use Permits in accordance with the separately published fee schedule.

c. Permits may be granted within Limited Development Areas for ski jumps, floats, boat moorage facilities, duck blinds, and other private floating recreation facilities when they will not create a safety hazard and inhibit public use or enjoyment of project waters or shoreline. A Corps permit is not required for temporary ice fishing shelters or duck blinds when they are regulated by a state program.

d. Group owned boat mooring facilities may be permitted where practicable (e.g. where physically feasible in terms of access, water depths, wind protection, etc.).

2. Applications for Shoreline Use Permits

a. Applications for private shoreline use permits will be reviewed with full consideration of the policies set forth in this and referenced regulations, and the Shoreline Management Plan. Fees associated with the Shoreline Use Permit shall be paid prior to issuing the permit. Plans and specifications of the proposed facility shall be submitted and approved prior to the start of construction. Submissions should include engineering details, structural design, anchorage method, and construction materials; the type, size, location and ownership of the facility; expected duration of use; and an indication of willingness to abide by the applicable regulations and terms and conditions of the permit. Permit applications shall also identify and locate land-based support facilities and any specific safety considerations.

b. Permits will be issued by the district commander or his/her authorized representative on ENG Form 4264–R (Application for Shoreline Use Permit) (Appendix B). Computer generated forms may be substituted for ENG Form 4264–R provided all information is included. The computer generated form will be designated, "ENG Form 4264–R–E, Oct 87 (Electronic generation approved by USACE, Oct 87)".

c. The following are guides to issuance of shoreline use permits:

(1) Use of boat mooring facilities, including piers and boat (shelters) houses, will be limited to watercraft mooring and storage of gear essential to watercraft operation.

(2) Private floating recreation facilities, including boat mooring facilities shall not be constructed or used for human habitation or in a manner which gives the appearance of converting Federal public property on which the facility is located to private, exclusive use. New docks with enclosed sides (i.e. boathouses) are prohibited.

(3) No private floating facility will exceed the minimum size required to moor the owner's boat or boats plus the minimum size required for an enclosed storage locker for oars, life preservers and other items essential to watercraft operation. Specific size limitations may be established in the project Shoreline Management Plan. All vessels must be mored within the authorized slip dimension.

(4) All private floating recreation facilities or boat mooring facilities will be constructed in accordance with plans and specifications, approved by the Corps, or a written certification from the builder, stating the facility is structurally safe, will accompany the initial submission of the plans and specifications.

(5) Procedures regarding permits for individual facilities shall also apply to permits for non-commercial group mooring facilities.

(6) Facilities anchored to the shore shall be securely anchored by means of moorings which do not obstruct the free use of the shoreline, nor damage vegetation or other natural features.

(7) Electrical service and equipment leading to or on private mooring facilities must not pose a safety hazard nor conflict with other recreational use. Electrical installations must be weatherproof and meet all current applicable electrical codes and regulations. The facility must be equipped with quick disconnect fittings mounted above the flood pool elevation. All planned

electrical installations must be certified in writing by a state registered electrician. A copy of the electrical certification must be provided to the resource manager before a permit can be issued or renewed. The resource manager will require immediate removal or disconnection of any electrical equipment that is not certified and safely maintained. All new electrical lines should be installed underground. Existing overhead lines will be allowed, as long as they meet all applicable electrical codes, regulations and above guidelines, to include compatability and safety related to fluctuating water levels.

(8) Private floating recreation facilities will not be placed so as to interfere with navigation, or create a safety or health hazard.

(9) The district commander may place special conditions on the permit when deemed necessary.

(10) Vegetation modification is allowed, including but not limited to, cutting, pruning, chemical manipulation by licensed applicator, removal or seeding of, vegetation by private individuals on project lands only in those areas designated in the project Shoreline Management Plan as Limited Development Shoreline Areas or Protected Shoreline Areas. An existing (as of 1 July 1987) vegetation modification permit, within a shoreline allocation which normally would not allow vegetation modification, should be grandfathered. Permittees will not create the appearance of private ownership of public lands.

(11) The term of a vegetation modification permit will be for five years. Where possible, such permits will be consolidated with other shoreline management related permits into a single permit. The district commander is authorized to issue vegetation modification permits of less than five years for one-time requests or to aid in the consolidation of shoreline management permits.

(12) The permittee may delineate the government property line, as surveyed and marked by the government, in a clear but unobtrusive manner approved by the district commander and in accordance with the project Shoreline Management Plan and the conditions of the permit. This delineation may include, but is not limited to, boundary plantings and fencing. The delineation will be accomplished at no cost to the government.

(13) No permit will be issued for vegetation modification in Protected Lakeshore Areas until the environmental impacts of the proposed modification are assessed.

(14) The original of the completed permit application is to be retained by the permittee. A duplicate will be retained in the Resource Manager's office.

3. Permit Revocation

Permits may be revoked by the district commander when it is determined that the public interest requires such revocation or when the permittee fails to comply with terms and conditions of the permit or of this regulation. Permits for duck blinds and ice fishing shelters will be issued to cover a period not to exceed 30 days prior to and 30 days after the season. Short-term permits for one-time activities will continue to be issued by the district commander as necessary.

4. Removal of Facilities

Facilities not removed when specified in the permit or when requested after termination or revocation of the permit will be treated as unauthorized structures pursuant to Title 36, Chapter III, Part 327.20, of the Code of Federal Regulations.

5. Posting of Permit Number

Each district will procure 5' x 8' or larger printed permit tags of light metal or plastic for posting on floating facilities. The permit display tag shall be posted on a floating facility and/or on the land area covered by the permit, so that it can be visually checked, with ease in accordance with instructions provided by the resource manager.

Appendix B to 3327.30—Application for Shoreline Use Permit [Reserved]

Appendix C to § 327.30—Shoreline Use Permit Conditions

1. This permit is granted solely to the applicant for the purpose described on the opposite side of this form.

2. The permittee agrees to and does hereby release and agree to save and hold the Government harmless from any and all causes of action, suits at law or equity, or claims or demands or from any liability of any nature whatsoever for or on account of any damages to persons or property, including a permitted facility, growing out of the ownership, construction, operation or maintenance by the permittee of the permitted facilities.

3. Ownership, construction, operation, use and maintenance of a permitted facility are subject to the Government's navigation servitude.

4. No attempt shall be made by the permittee to forbid the full and free use by the public of all navigable waters or lands at or adjacent to the permitted facility or to unreasonably interfere with navigation in connection with the ownership, construction, operation or maintenance of a permitted facility.

5. The permittee agrees that if subsequent operations by the Government require an alteration in the location of a permitted facility or if in the opinion of the district commander a permitted facility shall cause unreasonable obstruction to navigation or that the public interest so requires, the permittee shall be required, upon written notice from the district commander to remove, alter, or relocate the permitted facility, without expense to the Government.

6. The Government shall in no case be liable for any damage or injury to a permitted facility which may be caused by or result from subsequent operations undertaken by the Government for the improvement of navigation or for other lawful purposes, and no claims or right to compensation shall accrue from any such damage. This includes any damage that may occur to private property if a facility is removed for noncompliance with the conditions of the permit.

7. Ownership, construction, operation, use and maintenance of a permitted facility are subject to all applicable Federal, state and local laws and regulations. Failure to abide by these applicable laws and regulations may be cause for revocation of the permit.

8. This permit does not convey any property rights either in real estate or material; and does not authorize any injury to private property or invasion of private rights or any infringement of Federal, state or local laws or regulations, nor does it obviate the necessity of obtaining state or local assent required by law for the construction, operation, use or maintenance of a permitted facility.

9. The permittee agrees to construct the facility within the time limit agreed to on the permit issuance date. The permit shall become null and void if construction is not completed within that period. Further, the permittee agrees to operate and maintain any permitted facility in a manner so as to provide safety, minimize any adverse impact on fish and wildlife habitat, natural, environmental, or cultural resources values and in a manner so as to minimize the degradation of water quality.

10. The permittee shall remove a permitted facility within 30 days, at his/her expense, and restore the waterway and lands to a condition accepted by the resource manager upon termination or revocation of this permit or if the permittee ceases to operate or maintain a permitted facility. If the permittee fails to comply to the satisfaction of the resource manager, the district commander may remove the facility by contract or otherwise and the permittee agrees to pay all costs incurred thereof.

11. The use of a permitted boat dock facility shall be limited to the mooring of the permittee's watercraft and the storage, in enclosed locker facilities, of his/her gear essential to the operation of such watercraft.

12. Neither a permitted facility nor any houseboat, cabin cruiser, or other vessel moored thereto shall be used for human habitation or in any manner which gives the appearance of converting the public property, on which the facility is located, to private use.

13. Facilities granted under this permit will not be leased, sub-let or provided to others by means of engaging in commercial activity(s) by the Permittee or his/her agent for monetary gain. This does not preclude the permittee from selling total ownership to the facility.

14. Boat mooring buoys and flotation units of floating facilities shall be constructed of materials that will not become waterlogged or sink when punctured.

15. Floating structures are subject to periodic inspection by authorized Corps representatives. The permittee will be notified of any deficiencies, at which time he/she has 30 days to submit a written schedule for correction to the resource manager. No deviation or changes from approved plans will be allowed without prior written approval of the resource manager.

16. Floating facilities shall be securely anchored to the shore in accordance with the approved plans by means of moorings which do not obstruct general public use of the shoreline or adversely affect the natural terrain or vegetation.

17. The permit display tag shall be posted on a floating facility and/or on the land areas covered by the permit so that it can be visually checked with ease in accordance with instructions provided by the resource manager.

18. No vegetation other than that prescribed in the permit will be damaged, destroyed or removed. No vegetation of any kind will be planted, other than that specifically prescribed in the permit.

19. No change in land form such as grading, excavation or filling is allowed.

20. This permit is non-transferable. Upon the sale or other transfer of the permitted facility or the death of the permittee and his/her legal spouse, this permit is null and void.

21. By 30 days written notice, mailed to the permittee by certified letter, the district commander may revoke this permit whenever the public interest necessitates such revocation or when the permittee fails to comply with any permit condition or term. The revocation notice shall specify the reasons for such action. If the permittee, requests in writing a hearing from the resource manager within the 30 day period, the district commander shall grant such hearing at the earliest opportunity. In no event shall the hearing date be more than 60 days from the date of the hearing request. A final decision shall be rendered in writing at the conclusion of such hearing and mailed to the permittee by certified letter.

22. Notwithstanding the condition cited in paragraph 21 above, if in the opinion of the district commander, emergency circumstances dictate otherwise, the district commander may summarily revoke the permit.

23. When vegetation modification on these lands is accomplished by chemical means, the program will be in accordance with appropriate Federal, state and local laws, rules and regulations. The use of all chemicals requires advance approval by the resource manager and should be applied by licensed applicator.

24. The resource manager or his/her authorized representative shall be allowed to cross the permittee's property, as necessary, to inspect facilities and/or activities under permit.

25. When vegetation modification is allowed, the permittee may delineate the government property line in a clear, but unobtrusive manner approved by the district commander and in accordance with the project Shoreline Management Plan.

26. If the ownership of a permitted facility is sold or transferred, the permittee will notify the Resource Manager of the action prior to finalization. The new owner must apply for a Shoreline Use Permit within 14 days or remove the facility and restore the use area within 30 days from the date of ownership transfer.

27. If permitted facilities are removed for storage or extensive maintenance, the resource manager may request all portions of the facility be removed from public property.

Appendix D to 327.30—Permit [Reserved]

[FR Doc. 88-12823 Filed 6-7-88; 8:45 am]

BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 86, and 600

[FRL 3393-5]

Control of Refueling and Evaporative Emissions From New Motor Vehicles and Engines and Gasoline and Alcohol Blends Volatility

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop.

SUMMARY: EPA has scheduled a public workshop to discuss the need to revise the refueling and evaporative emission test procedures associated with the onboard refueling and volatility control programs proposed on August 19, 1987 (52 FR 31162 and 52 FR 31274, respectively). EPA had assumed that the adoption of onboard refueling control systems would address the control of potentially significant gasoline vapor emissions not otherwise addressed by the evaporative test procedures or standards. In particular, EPA expected the adoption of integrated onboard system designs, which have excess vapor control capacity most of the time (i.e., between refuelings) which would be available to control evaporative emissions in situations more severe than current test conditions, but typical of high-ozone days.

Since the time of the proposals, a number of manufacturers have indicated their preference for non-integrated onboard system designs which would not be able to control these excess evaporative emissions. To the extent that manfuacturers adopt such non-integrated onboard designs, changes in the proposed test procedures appear necessary in order for the procedures to ensure that non-integrated systems provide the same degree of control in-use as integrated systems, especially under those ambient conditions occurring when ozone is a problem. Also, the same concerns would be present were EPA to promulgate gasoline volatility controls and their associated test procedure modifications prior to promulgating onboard refueling controls, as again there would be no excess capacity available for important air quality situations not currently addressed by EPA's test procedures.

This workshop is designed to foster discussion of these issues and the possible solutions that EPA may propose later this year. In addition, because manufacturers have requested an opportunity to present issues related to the proposed refueling and evaporative emission test procedures, a portion of the workshop will also be devoted to these issues.

DATE: The workshop is scheduled for Thursday, June 30, 1988 from 9:30 a.m. to 4:30 p.m.

ADDRESS: The workshop will be held at EPA's Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

FOR FURTHER INFORMATION CONTACT: Tad Wysor, SDSB-12, U.S. Environmental Protection Agency, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105 (313) 668-4332.

SUPPLEMENTARY INFORMATION: EPA's interest in a workshop at this time stems from the design approaches that many manufacturers appear to be following in response to EPA's onboard refueling Notice of Proposed Rulemaking (NPRM) (see SUMMARY, above). EPA has expressed a continuing concern that gasoline vapor emissions in situations more severe than EPA's current test procedures may represent a significant in-use emission problem. Some of these situations were highlighted in both the onboard refueling NPRM (52 FR 31185) and the volatility NPRM (52 FR 31291). Such concerns include driving patterns which repeatedly load the canister without any opportunity for purging (i.e., multiple diurnals); "running losses" (uncontrolled fuel tank vapors generated during vehicle operation); and the effects on these and other situations of the higher-than-average temperatures characteristic of high ozone days. EPA had expected that onboard control system designs would address many of these concerns.

At the time of the onboard and volatility proposals, EPA expected that manufacturers would likely choose "integrated" refueling control designs for reasons of simplicity, space, and cost. Integrated systems in this context consist of a single charcoal canister which is connected to the fuel tank in such a way which allows vapors to freely flow to the canister at all times. Because of these characteristics, as well as the reasonably worst-case nature of the refueling test procedure itself, EPA's assumption was that the great majority of vapors generated in the fuel tank on high-ozone days would be controlled.

However, many manufacturers at this time appear to be considering non-integrated refueling control systems which incorporate separate more conventionally-sized evaporative canisters and separate purge systems. The capacity of the refueling canister in such systems would not be available to control excess evaporative emissions.

The capacity of the evaporative canister and purge on vehicles with these systems will likely be insufficient to control vapor emissions under many high ozone conditions.

EPA's concern is that while the proposed refueling and evaporative test procedures may adequately address control of such emissions from vehicles with integrated systems, non-integrated and conventional evaporative systems certified under the proposed test procedures would not likely be effective. Since EPA believes that the control of evaporative emissions in most situations typical of high ozone days is crucial to improving ozone-related air quality, EPA wishes to raise these issues and discuss possible test procedure modifications at the earliest possible date.

Possible Changes to Test Procedures

To the extent that some manufacturers may prefer non-integrated systems, EPA believes that changes in the proposed test procedures may be necessary to ensure that non-integrated designs will control excess vapor emissions on days when ozone control is most needed. While the test procedures as they relate to integrated systems may need minor refinements, EPA's primary concern is the performance on non-integrated refueling control systems.

The most direct way to resolve many of EPA's concerns would be to change test cell, diurnal and/or fuel temperatures to better represent high-ozone day conditions and to add the direct measurement of running losses. However, the Agency would prefer to avoid the inconvenience and cost of such changes if simpler revisions would achieve the same goal. One such alternative might be to add one or more additional diurnal head builds to the test procedure to increase the capacity of the evaporative emission control system. Also, an engineering review of the fuel system may be sufficient to ensure that there are no design features (e.g., limiting orifices, valves) Which would allow tank pressure build-up and in-use running losses and avoid the need to measure such emissions.

While the primary focus of these modifications is the non-integrated onboard system, the engineering review of the fuel system mentioned above may also be necessary in the testing of vehicles with integrated onboard systems. It is also possible that the test procedure for vehicles with intergrated systems could be simplified—for example, by deleting the diurnal heat build, if this could be shown to be superfluous based on the other aspects of the proposed sequence (such as the SHED measurement of refueling emissions and the integrated nature of the control system).

Finally, if temperatures of any part of the test procedure are changed to better represent high-ozone-day experience, the selection of the tempertures becomes and issue. EPA is analyzing temperature data on high-ozone days and will have results by the time of the workshop. A closely related issue is the question of which ASTM class to base test conditions and test fuel RVP. As proposed, EPA expects in-use gasoline volatility controls to be implemented which will result in equivalent emission reductions throughout the country regardless of ASTM class. However, EPA has received comments from the oil industry that the cost of RVP reductions is dramatically higher below 9 pounds RVP. If EPA were to promulgate less than the proposed proportional control in Class A and B areas, worst-case vehicle emissions would then tend to occur in these areas rather than in Class C areas. Under such a scenario, EPA would need to consider basing any revised test procedure temperatures on Class A or Class B high-ozone-day temperatures and/or revising the test fuel RVP to match in-use volatility in these areas.

Depending on the outcome of discussions at the workshop and any subsequent data received, EPA intends to propose changes to the test procedures proposed in both the volatility and refueling NPRMs as a part of the supplemental NPRM of the onboard refueling rulemaking (see 52 FR 31205). The purpose of this notice and the associated workshop is to provide as much advance notice as possible and also to help ensure that any proposed revisions are based on all available information.

Outline of the Workshop

The workshop will involve presentations by EPA staff and open discussion on the above mentioned and other pertinent issues. Staff presentations will include analyses of current ozone nonattainment area temperatures, in-use trip sequence data, and excess evaporative emissions under these conditions. EPA staff will then describe possible test procedure changes and entertain discussion of them. Finally, as some manufacturers have requested, there will be an opportunity for attendees to raise issues related to the already proposed refueling and evaporative test procedures.

The Agency encourages broad industry and public participation in this workshop and invites thorough technical evaluation of these issues.

Date: May 31, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88-12886 Filed 6-7-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

Atlantic Billfishes

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

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the South Atlantic Fishery Management Council, in cooperation with the New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Mangement Councils, has submitted the Fishery Management Plan for Atlantic Billfishes (FMP) for review by the Secretary of Commerce. Comments from the public are invited.

DATE: Comments will be accepted until August 1, 1988.

ADDRESSES: Send comments to Rodney C. Dalton, Fishery Operation Branch, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Copies of the FMP and supporting documents may be obtained from the South Atlantic Fishery Management Council, Southpark Building, Suite, 306, 1 Southpark Circle, Charleston, SC 29407, telephone 803-571-4366.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton (FMP Coordinator), 813-893-3722.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Councils under the authority of the Magnuson Fishery Conservation and Management Act, which requires the Secretary of Commerce, upon receipt of the FMP, immediately to publish notice of its availability for public review and comment. The Secretary will consider public comments in determining whether to approve the FMP.

The FMP proposes regulations for managing the foreign and domestic fisheries for Atlantic billfishes within the exclusive economic zone in the Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea). The FMP proposes to (1) prohibit the sale of blue marlin, white marlin, sailfish, and

spearfish caught in specified portions of the Atlantic Ocean; (2) establish minimum size limits for blue marlin, white marlin, and sailfish; (3) prohibit possession of billfishes taken by pelagic longline and drift net vessels; (4) restrict possession of billfishes to those taken by rod and reel; and (5) require catch and effort reports from billfish tournaments.

On September 25, 1987, the Environmental Protection Agency published a notice of availability of a draft environmental impact statement for this FMP (52 FR 36096). Proposed regulations based on this FMP are scheduled to be published within 15 days.

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

Dated: June 3, 1988

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management.

[FR Doc. 88-12919 Filed 6-3-88; 5:00 pm]

BILLING CODE 3310-22-M

Notices

Federal Register
Vol. 53, No. 110
Wednesday, June 8, 1988

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

Hard Red Winter Wheat; Protein Equipment Calibration

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Beginning June 13, 1988, the Federal Grain Inspection Service (FGIS) will implement a new calibration for near infrared reflectance (NIR) instruments for Hard Red Winter wheat protein determinations.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., USDA/FGIS/Resources Management Division, Room 0628–S, P.O. Box 96454, Washington, DC 20090–6454; telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: A new Hard Red Winter (HRW) calibration for near infrared reflectance instruments will be implemented for protein determinations. The calibration was developed with the assistance of the USDA Agricultural Research Service Instrumentation Research Laboratory and the Agricultural Marketing Service Statistics Branch. New NIR values for the national standard reference samples will be used to detect instrument drift and keep the NIR's aligned with the Kjeldahl laboratory at the FGIS Technical Center in Kansas City.

Beginning Monday, June 13, 1988, the new calibration will be implemented in FGIS field offices and the official agencies in their circuits in the following sequence:

1. Wichita, KS; Moscow, ID;
2. Kansas City, MO; St. Louis, MO; Omaha, NE;
3. Grand Forks, ND; Duluth and Minneapolis, MN;
4. Beaumont, Corpus Christi, Galveston, Pasadena, and Plainview, TX; Belle Chasse, Destrehan and Lutcher, LA;
5. Olympia, WA; Portland, OR; Sacramento, CA.

A technical review of the new calibration indicates that the effect on the national system should be minimal. However, the precise impact of the new calibration at any given location cannot be accurately predicted.

To insure that the HRW calibration reflects the new varieties being grown by producers and is therefore as precise as possible, FGIS plans to update the calibration annually using a five year rollover of data.

Dated: June 3, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88–12914 Filed 6–7–88; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget

DOC has submitted to OMB for expedited 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: Incidental Take-Sea Turtles.

Form Numbers: Agency—N/A; OMB—0648–0176.

Type of Request: Reinstatement of a previously approved collection.

Burden: 12 respondents; 1 reporting hour.

Needs and Uses: Each year waters in the Texas area are closed to delay harvest of small brown shrimp until they reach a larger, more valuable size. To minimize economic hardship on shrimp fishermen, NOAA has recently issued regulations allowing shrimp operations in waters 15 miles and beyond, which are generally closed during the "Texas" closure period. Shrimp fishing in these waters, however, could result in the capture, injury, or killing of endangered or threatened sea turtles. To comply with the requirements of the Endangered Species Act, NOAA has set a limit on the allowable take of turtles. The proposed reporting requirement will be used to monitor the taking of sea turtles during shrimp trawling operations in June and July.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: By fishing trip.

Respondent's Obligation: Mandatory.

OMB Desk Officer: John Griffen, 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, 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 John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 2, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–12853 Filed 6–7–88; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget

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 Bureau of Standards.

Title: Malcolm Baldrige National Quality Award Application.

Form Numbers: NBS—N/A; OMB—N/A.

Type of Request: Existing collection in use without an OMB control number.

Burden: 60 respondents; 4,800 reporting hours.

Needs and Uses: The National Quality Award was established by Public Law 100–107, the "Malcolm Baldrige National Quality Improvement Act." The Act's purpose is to establish and conduct a national quality improvement program. To support this effort, an Award will be given to: (1) Promote quality awareness, (2) recognize quality achievements of U.S. companies, and (3) publicize quality successes, which can be adopted by other companies. The information provided by companies seeking the award will be used in evaluating the applicants.

Affected public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Timothy Sprehe, 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

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

Dated: June 2, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–12854 Filed 6–7–88; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-614-502]

Low-Fuming Brazing Copper Rod and Wire From New Zealand; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 10, 1988 the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on low-fuming brazing copper rod and wire from New Zealand. The review covers one manufacturer/exporter of this merchandise to the U.S. and the period August 2, 1985 through November 30, 1986.

We gave interested parties an opportunity to comment. We received comments from the respondent. Based on our analysis, we have changed our results from those presented in the preliminary results.

EFFECTIVE DATE: June 8, 1988.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4195/3601.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 1988 the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 7774) the preliminary results of its administrative review of the antidumping duty order on low-fuming brazing copper rod and wire from New Zealand. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The products covered by this review are low-fuming brazing copper rod and wire ("LFB"), principally of copper and zinc alloy ("brass"), or varied dimensions in terms of diameter, whether cut to length or coiled, whether bare or flux-coated, currently classifiable under Tariff Schedules of the United States Annotated numbers 612.6205, 612.7220, and 653.1500 and Harmonized System item numbers 7407.21.50, 7408.11.60, 7408.19.00, 7408.21.00, 7408.22.50, 7408.29.50, 8311.10.00, 8311.20.00, 8311.30.60, and 8311.90.00.

The review covers one manufacturer/exporter of LFB from New Zealand to the U.S., McKechnie Metal Products Limited ("McKechnie"), and the period August 2, 1985 through November 30, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the respondent.

Comment 1: McKechnie argues that since it bought forward U.S. currency to cover exchange rate fluctuations, the Department should use these forward rates in its calculation of dumping margins rather than the rates in effect on the actual sale dates.

Department's Position: In accordance with § 353.56 of our regulations, we made all currency conversions at the rates, certified by the Federal Reserve Bank, in effect on the U.S. sale dates.

Comment 2: McKechnie argues that the Department should have adjusted for the physical differences between the coiled merchandise that McKechnie sold in the U.S. and the straightened merchandise that McKechnie sold in the home market.

Department's Position: We agree and have adjusted our calculations accordingly.

Final Results of the Review

Based on our analysis of the comments received, we have changed our results from those presented in the preliminary results and determined that the following margin exists:

Manufacturer/ exporter	Time period	Margin (percent)
McKechnie	8/02/85–11/30/86	2.61

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 2.61 percent shall be required. This deposit requirement is effective for all shipments of low-fuming brazing copper rod and wire from New Zealand entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: May 19, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88–12910 Filed 6–7–88; 8:45 am]

BILLING CODE 3510-DS-M

[A-469-007]

Final Results of Antidumping Duty Administrative Review; Potassium Permanganate From Spain

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 15, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on potassium permanganate from Spain. At the request of the respondent we held a public hearing on February 19, 1988. Based on our analysis of the issues raised at the hearing, the final results of review are changed from those presented in the preliminary results.

EFFECTIVE DATE: June 8, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–5222/2923.

SUPPLEMENTARY INFORMATION:

Background

On January 15, 1988, the Department of Commerce ("the Department") published in the Federal Register (53 FR 1051) the preliminary results of antidumping administrative review of the antidumping duty order on potassium permanganate from Spain (49 FR 2277, January 19, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of potassium permanganate currently classifiable under item 420.2800 of the Tariff Schedules of the United States Annotated. This product is currently classifiable under HS item 2841.60.00. Potassium permanganate is an inorganic chemical produced in free flowing, technical and pharmaceutical grades.

The review covers Asturquimica, S.A. and the period January 1, 1986 through December 31, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request to Asturquimica, we held a public hearing on February 19, 1988. Asturquimica submitted additional information to support its claims for adjustment publication of the preliminary determination. It is the Department's policy not to accept new data after publication of a preliminary determination; therefore, this information was not considered in making our final determination.

Comment 1: Asturquimica asserts that the Department should have "lagged" the exchange rate to adjust for fluctuations in the exchange rate. As an alternative, Asturquimica suggests that the Department use an average home market price based on a whole year or half year instead of the monthly weighted-average price the Department used for comparison to United States price.

Department's Position: We disagree. Section 353.56(b) of the Commerce Regulations is a special rule for *fair value* investigations which allows us to compensate for price differences resulting from sustainted changes or temporary flucations in prevailing exchange rates. No provision is made for this adjustment in section 751 administrative reviews.

In this review, since all comparisons involved purchase price transactions, we made currency conversions in accordance with § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank. In accordance with the Department's normal policy, we calculated a monthly weighted-average home market price for comparison to United States price. This satisfies the requirement of section 773(a) of the Tariff Act that foreign market value shall be ascertained as of the date of purchase, in the case of purchase price transactions, or as of the date of resale in the United States by a related importer.

To include home market sales taking place many months after the export sale, in the computation of foreign market value, as respondent suggests, would significantly impair an exporter's ability to maintain his export prices at not less than foreign market values, since those later prices could not be known as of the date of the U.S. sale.

Comment 2: Asturquimica claims that an adjustment should be made for additional handling charges in Spain. Asturquimica did incur these expenses on Spanish sales but did not incur them on United States sales; therefore, an adjustment for this difference is appropriate.

Department's Position: We agree. Since these expenses would be deducted from the U.S. selling price, it is necessary to also deduct them from home market selling prices to achieve a proper comparison. Therefore, we have recalculated the foreign market value to include a deduction for brokerage/handling charges.

Comment 3: Asturquimica claims that an adjustment should be made for technical services provided in the home market. These services are provided to Asturquimica's home market customers when these customers have problems with their potassium permanganate, and in many cases, these services are provided by Asturquimica to its customers' customers.

Department's Position: We disagree. Asturquimica claims an adjustment for technical services to account for the salaries and travel expenses of two chemical engineers who perform the services at issue. The provision of these services is considered to be of a promotional nature establishing a buyer/seller relationship rather than providing services for specific sales. Verification in a prior review established that the engineers contact customers prior to sales, and no information in the current response indicated that their activities have changed. Therefore, no adjustment was allowed.

Comment 4: Asturquimica claims that an adjustment should be made for advertising. Asturquimica states that it meets the requirement of § 353.15 of the Commerce Regulations that the exporter must demonstrate that it has incurred advertising costs on behalf of its customers and that these costs would then be attributed to later sales of the merchandise by the customers.

Department's Position: We agree. After further review of the information on the record, we agree that an adjustment for advertising is appropriate. The advertising in question was directed both to Asturquimica's customers and to the customers' clients. As such, it is partially an assumption of the purchasers' selling costs and partially an indirect selling expense. An advertising amount proportional to sales to distributors as a share of total sales has been allowed as an adjustment of prices to distributors. We have adjusted our calculation of foreign market value to include a deduction for advertising.

Comment 5: Asturquimica claims that a circumstance of sale adjustment should be made for invoice processing costs. Asturquimica's invoices are processed by an unrelated firm which charges Asturquimica for these services on the basis of the number of invoices processed. It claims that all invoice costs are the same. Asturquimica maintains that because the Department's comparison of prices in each market is on a per ton basis, not on a per sale basis, this adjustment should be allowed since Asturquimica incurred a greater ton per cost on sales in Spain, where each sale was at a significantly lower quantity.

Department's Position: While Asturquimica provided the total charged to it for "services of invoicing, process, verification and control of same", Asturquimica did not actually pay a charge for each invoice for the sales under consideration. Therefore, as no expense could be considered to be directly related to any particular sale, no adjustment was allowed.

Comment 6: Asturquimica claims that an adjustment should be made for differences in levels of trade. In Spain, Asturquimica sells to wholesalers who sell to end users. In the United States, Asturquimica sells to an importer who sells to distributors who sell to end users.

Department's Position: We disagree. In calculating foreign market value, the Department used only sales to wholesalers, which we determined to be at the same level of trade as Asturquimica's customer in the United

States. Therefore, no adjustment is necessary.

Comment 7: Asturquimica points out a clerical error made in the calculation of the weighted-average home market price.

Department's Position: We agree and have corrected this error in our final determination. The Department has also corrected a programming error found after publication of the preliminary determination.

Comment 8: The petitioner submits that the Department improperly adjusted U.S. price by adding the amount of indirect taxes rebated to Asturquimica under the provisions of Spain's Regimen Transitorio del IVA program. Petitioner submits that the taxes were rebated because the goods were in inventory on January 1, 1986, and not "by reason of exportation." Asturquimica maintains that the potassium permanganate in inventory at the beginning of the review period was exported during the period and Asturquimica received the rebate for the exported material. Asturquimica received no such rebate on potassium permanganate sold in Spain.

Department's Position: The Department allowed Asturquimica's claim for adjustment for rebated taxes in our preliminary determination based on information contained in its response to our questionnaire. However, after review of Title IX of Value Added Law 30/1985 we have determined that no adjustment for this rebate is appropriate. Article 72.1(a) provides as follows:

"Taxpayers with a volume of sales of more than 50 million pesetas during the year immediately preceding the date the Value Added Tax comes into force may deduct 6% of the acquisition price, including IGTE, of all tangible goods or their component parts, listed in their inventory at said date, as long as the acquisitions of such goods was subject to taxation under the IGTE and not exempt thereof * * * ".

This provision clearly states that the rebate was paid to Asturquimica because the goods were in inventory on January 1, 1986 and not because these goods were exported. Asturquimica did not receive a rebate on sales in Spain because that merchandise was not in inventory on January 1, 1986. It is also clear from this provision that if the potassium permanganate sold in Spain during the review period had been in inventory on January 1, 1986, Asturquimica would have received a rebate on those sales.

For an adjustment to be made, the rebate must have been due to the exports of the product. This is not the case in this situation. Therefore, the Department has recalculated United States price without taking into account an adjustment for rebated taxes.

Final Results of Review

Based on our analysis of the comments received, the final results are changed from those presented in the preliminary results of review and we determine that a margin of 16.16 percent exists for Asturquimica, S.A. for the period January 1, 1986 through December 31, 1986.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a) (1) of the Tariff Act, a cash deposit of estimated antidumping duties of 16.16 percent shall be required. This deposit requirement is effective for all shipments of Spanish potassium permanganate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

Date: June 1, 1988.

[FR Doc. 88-12908 Filed 6-7-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-001]

Sorbitol From France; Final Results of Antidumping Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 21, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on Sorbitol from France. The review covers one manufacturer of this merchandise and the period April 1, 1986 through March 31, 1987.

We gave interest parties an opportunity to comment on the preliminary results. We received no comments and the final results remain unchanged from those presented in our preliminary results of review.

EFFECTIVE DATE: June 8, 1988.

FOR FURTHER INFORMATION CONTACT: Robin Gray or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; Telephone (202) 377-1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 1988, the Department of Commerce ("the Department") published in the Federal Register (53 FR 13142) the preliminary results of its administrative review of the antidumping duty order on sorbitol from France (47 FR 15391, April 9, 1982). The respondent, Roquette Freres requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of French crystalline sorbitol. Crystalline sorbitol is a polyol produced by the catalytic hydrogenation of sugars (glusose). It is used in the production of sugarless gum, candy, groceries and pharmaceuticals. Such merchandise is currently classifiable under item number 493.6820 of the *Tariff Schedules of the United States Annotated* and item number 2905.44.0000 of the Harmonized System. The review covers the one known French exporter of crystalline sorbitol to the United States, Roquette Freres, and the period April 1, 1986 through March 31, 1987.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments or requests for a hearing. Based on our analysis, the final results of our review are unchanged from those we presented in the preliminary results, and we determine that a margin of 0.46 percent exists for the period April 1, 1986 through March 31, 1987.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Individual differences between United States price and foreign market value may vary from the percentage above.

Further, since the margin for Roquette Freres for the review period is less than 0.50 percent and therefore *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties, as required by section 751(a)(1) of the Tariff Act, on shipments of French sorbitol entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1987 and who is unrelated to any reviewed firm, or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of French sorbitol entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Dated: May 19, 1988.

[FR Doc. 88-12909 Filed 6-7-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-086]

Spun Acrylic Yarn From Japan; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke in Part

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

ACTION: Notice of preliminary results of antidumping duty administrative review and tentative determination to revoke in part.

SUMMARY: In response to requests by eight respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on spun acrylic yarn from Japan. The review covers eight exporters of this merchandise and the period April 1, 1986 through March 31, 1987. The review indicates no shipments during the period.

As a result of the review, the Department has tentatively determined to revoke the antidumping duty order with respect to certain firms.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke in part.

EFFECTIVE DATE: June 8, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5222/2923.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 43781) the final results of its last administrative review of the antidumping duty order on spun acrylic yarn from Japan (45 FR 24127, April 8, 1980). In accordance with § 353.53(a) of the Commerce Regulations, eight exporters requested that we conduct an administrative review, and we published the initiation on May 20, 1987 (52 FR 18937). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. In view of this; we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of spun acrylic plied yarn for machine knitting, currently classifiable under TSUSA items 310.5015 and 310.5049. Spun acrylic yarn is currently classifiable under HS item number 5509.32.00.

The review covers eight exporters of Japanese spun acrylic yarn and the period April 1, 1986 through March 31, 1987. There were no known shipments of this merchandise by these firms to the United States during the period.

Preliminary Results of the Review and Tentative Determination to Revoke in Part

As a result of our review, we preliminarily determine that the following margins exist during the period:

Manufacturer/ exporter	Time period	Margin (percent)
C. Itoh & Co., Ltd.	Apr. 86-Mar. 87	[1] 29.05
Gunze Sangyo, Inc.	do	[1] 29.05
Itoman & Co., Ltd.	do	[1] 18.33
Mitsubishi Corporation.	do	[1] 20.26
Mitsui & Co., Ltd.	do	[2] 0
Michimen Corporation.	do	[1] 23.19
Nissho Iwai Corporation.	do	[1] 18.33
Teijin Shoji Kaisha, Ltd.	do	[1] 29.05

[1] No shipments during the period; margins from fair value investigation

[2] No shipments during the period; margin from last review in which there were shipments.

Interested parties may request disclosure and/or an administrative protective order within 5 days after the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

These exporters requested partial revocation of the order and, as provided for in § 353.54(e) of the Commerce Regulations, have agreed in writing to an immediate suspension of liquidation and reinstatement in the order under

circumstances specified in the written agreement. These firms have not shipped this merchandise for more than four years. We asked our Tokyo office to verify that there had been no shipments of this merchandise to the United States during the last four years. Itoman and Mitsui refused to allow verification and Mitsubishi could not substantiate that there had been no sales for the last four years. Therefore, the Department used the best information available in determining the cash deposit for those firms and we deny their request for revocation.

Therefore, we tentatively determine to revoke the antidumpting duty order on spun acrylic yarn from Japan with respect to C. Itoh & Co., Ltd, Gunze Sangyo, Inc., Nichimen Corp., Nissho Iwai Corp., and Teijin Shoji Kaisha, Ltd. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise exported by these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Further, as provided for by § 353.48(b) of the Commerce Regulations, the Department shall require a cash deposit of estimated antidumping duties based on the above margins. For any shipments from the one remaining known manufacturer/exporter not covered by this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for that firm (49 FR 22368, May 29, 1984). For any further entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipment occured after March 31, 1987 and who is unrelated to the reviewed firms or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese spun acrylic yarn entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C., 1675 (a)(1), (c)), and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 354).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: May 19, 1988.

[FR Doc. 88-12911 Filed 6-7-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Tip Top Associates From an Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration; Commerce.

ACTION: Dismissal of appeal.

Tip Top Associates (Appellant) filed an appeal with the Secretary of Commerce under section 307 of the Coastal Zone Management Act in response to an objection by the South Carolina Coastal Council (State) to the Appellant's consistency certification for U.S. Army Corps of Engineers Application No. P/N 87-3B-351 for the filling of 0.74 acres of wetlands for the construction of a roadway over Cowford Creek in Horry County, South Carolina.

Since the filing of this appeal, the State has determined that the proposed activity is consistent with South Carolina's Coastal Zone Management Program. This determination is based on new information submitted by the Appellant which indicates that the proposed roadway will provide access for a fire station. In addition, the Appellant has agreed to address mitigation for unavoidable losses in the project design. This mitigation will be coordinated with the State.

Upon notification by the parties that this matter has been resolved amicably, the appeal has been dismissed. Tip Top Associates is barred from filing another appeal from the South Carolina Coastal Council's objection to Tip top Associates' original consistency certification.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Mackey, Attorney/Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Date: June 1, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

[Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance]

[FR Doc. 88-12865 Filed 6-7-88; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Application for Permit; Duke University Marine Laboratory (P371A).

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Duke University Marine Laboratory, Pivers Island, Beaufort, North Carolina 28516.

2. Type of Permit: Scientific Research.

3. Name and Number of Mammals: Atlantic bottlenose dolphin (*Tursiops truncatus*), 300.

4. Type of Take: Potential harassment while determining if seasonal or inter-annual population exist; individual identification; and an examination of the social organization of the dolphins.

5. Location of Activity: North Carolina coastal and estuarine waters.

6. Period of Activity: 2 Years.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm 805, Washington, DC; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: June 2, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-12849 Filed 6-7-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 5 p.m. on June 28, 1988, and from 8:30 a.m. to noon on June 29, 1988. The meeting will be held at the Doubletree Hotel, 2 Portola Plaza in Monterey, California 93940. The purpose of the meeting is to review the equating of new forms of the Armed Services Vocational Aptitude Battery. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Anita R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, the Pentagon, Washington, DC 20301-4000, telephone (202) 697-9271, no later than June 15, 1988.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 3, 1988.

[FR Doc. 88-12860 Filed 6-7-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (AS).

Date of Meeting: 21-24 June 1988.

Time: 0830-1600 hours.

Place: Redstone Arsenal, Huntsville, Alabama.

Agenda: The Army Science Board Independent Evaluation Panel of the Stinger Missile System will meet for briefings by MICOM, the Program Executive Office, and the contractor. 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 unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-12874 Filed 6-7-88; 8:45 am]

BILLING CODE 3710-08-M

Privacy Act of 1974, Altered System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice of an altered system of records.

SUMMARY: The Department of the Army is altering a system of records to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice on July 8, 1988, unless comments are received which result in a contrary determination.

ADDRESS: Send any comments to Commander, U.S. Army Information Systems Command, ATTN: AS-OPS-MR (Mr. Cliff Jones), Fort Huachuca, Arizona 85613-5000. Telephone (602) 538-6568, AUTOVON: 879-6568.

SUPPLEMENTARY INFORMATION: The Army's system of records notices inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published to date in the Federal Register as follows:

FR Doc. 85-10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86-14667 (51 FR 23578) June 30, 1986
FR Doc. 86-19534 (51 FR 30900) August 29, 1986
FR Doc. 86-25274 (51 FR 40479) November 7, 1986
FR Doc. 86-27580 (51 FR 44361) December 9, 1986
FR Doc. 87-8140 (52 FR 11847) April 13, 1987
FR Doc. 87-11379 (52 FR 18798) May 19, 1987
FR Doc. 87-15611 (52 FR 25905) July 9, 1987
FR Doc. 87-19686 (52 FR 32329) August 27, 1987
FR Doc. 87-26438 (52 FR 43932) November 17, 1987
FR Doc. 88-8671 (53 FR 12971) April 20, 1988
FR Doc. 88-10355 (53 FR 16575) May 10, 1988

The alteration consists of categories of individuals covered by the system being expanded to include all family members of Department of Army civilians who receive care in an Army operated or Army regulated activity and all persons suspected of abusing or neglecting family members to include contractors that work in Army operated or Army regulated activities. Categories of records in the system is being expanded to include Medical and Family Advocacy Case Management Team records and records concerning child abuse occurring in Army operated or regulated activities.

An altered system report, as required 5 U.S.C. 552a(o) of the Privacy Act was submitted on May 16, 1988 to the Administrator, Office of Information and Regulatory Affairs, OMB; the President of the Senate; and the Speaker of the House of Representatives, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

This record system was previously published in the Federal Register at 50 FR 22223, May 29, 1985.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 3, 1988.

A0917.10DASG

SYSTEM NAME:

Family Advocacy Case Management Files.

SYSTEM LOCATION:

Primary: Commander, U.S. Army Patient Administration Systems and Biostatistics Activity, ATTN: HSHI-QPD, Fort Sam Houston, TX 78234-6070.

Secondary: Office of the Surgeon General, Headquarters, Department of the Army, ATTN: DASG-AOR, 5109 Leesburg Pike, Falls Church, VA 22041-3258, U.S. Army medical treatment facility and/or office on post, camp, or station where file was initiated or, in some cases, subsequently transferred upon reassignment of military member.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) All family members entitled to care at Army medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities and all persons suspected of abusing or neglecting such family members.

(2) All family members of Department of Army civilians who receive care in an Army operated or regulated activity.

(3) All persons suspected of abusing or neglecting family members described in items (1) and (2) above to include contractors that work in Army operated or Army regulated activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical and Family Advocacy Case Management Team records of suspected or established cases of child abuse or neglect and cases of spouse abuse to include child abuse occurring in Army operated or regulated activities, extracts of law enforcement investigative reports, correspondence, family advocacy case management team reports, follow-up and evaluative reports, and other supportive data relevant to individual family advocacy case management files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Child Abuse Prevention and Treatment and Child Abuse Prevention and Treatment and Adoption Program Reform Act, 42 U.S.C. 5101, *et seq*; 5 U.S.C., section 301; 10 U.S.C., section 3013; E.O. 9397.

PURPOSE(S):

(1) To provide child abuse and neglect and spouse abuse treatment services. Services include mental health, education, counseling, health care, protection, foster care, safe shelter, legal and referral for members and former members of the uniformed services, civilians, and dependents receiving care under Army auspices or in an Army regulated or operated facility;

(2) To determine qualifications and suitability of Department of Army civilians and contractors for duty assignments and fitness of Army personnel for continued military services;

(3) To perform research studies and compile statistical data concerning uniformed survices personnel, civilians, and dependents receiving medical care under Army auspices, or services through an Army operated or regulated activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to:

(1) Departments and agencies of Executive Branch of government in performance of their official duties relating to coordination of family advocacy programs, medical care and research concerning child abuse and neglect, and spouse abuse;

(2) The Attorney General of the United States or his authorized representatives in connection with litigation or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies;

(3) Federal, state, or local governmental agencies when it is deemed appropriate to use civilian resources in counseling and treating individuals or families involved in child abuse or neglect or spouse abuse; or when appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement; or when a state, county, or municipal child protective service agency inquires about a prior record of substantiated abuse for the purpose of investigating a suspected case of abuse;

(4) National Academy of Sciences, private organizations and individuals for health research in the interest of the Federal government and the public and authorized surveying bodies for professional certification and accreditation bodies for professional certification and accreditation such as joint Commission for the Accreditation of Hospitals.

(5) See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfilm, magnetic tape or disc, punched cards, machine listings, and other computerized or machine readable media.

RETRIEVABILITY:

By name of the suspected abused child or spouse or abusive spouse, parent, or care taker and the name and/or SSN of the military member (Information may be indexed by the name of SSN of an Army employee, member, or contracted employee).

SAFEGUARDS:

Records are maintained in various kinds of filing equipment in specified monitored or controlled areas. Public access is not permitted. Records are accessible only to authorized personnel who are properly screened and trained, and on a need-to-know basis only. Computer terminals are located in supervised areas with access controlled by password or other user code system.

RETENTION AND DISPOSAL:

Spouse records are retained in decentralized office files for 5 years after the end of the year in which the case is closed and are then destroyed. Child records are retained in decentralized office files until the child is age 23 after which the record is destroyed. Records (DD Form 2486) in the central registry at the primary location are retained until the child is age 23 after which information is erased/destroyed; information on adults is retained for 5 years after the end of the year in which the case was closed and is then erased.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, Department of Army, 5109 Leesburg Pike, Falls Church, VA 22041–3258.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether this system of records contains information about them should contact either the commander of the medical center or hospital where treatment was received or the Central Registry at the U.S. Army Patient Administration Systems and Bioistatistics Activity, ATTN: HSHI–QPD, Fort Sam Houston, TX 78234–6070.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records in this system pertaining to them should submit a written request as indicated in "Notification procedure". Individual should provide his/her full name, SSN, current address, date and location, details that will assist in locating the records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing inital determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, educational institutions, medical institutions, police and investigating officers, state and local government agencies, witnesses, and records and reports prepared on behalf of the Army by boards, committees, panels, auditors, etc. Information may also derive from interviews, personal history statements, and observations of behavior by professional persons (i.e., social workers, physicians—including psychiatrists and pediatricians, psychologists, nurses, and lawyers).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

All portions of this system which fall within 5 U.S.C., section 552a(k)(2) and (5) are exempted from the following provisions of Title 5 U.S.C., section 552a(d).

[FR Doc. 88–12861 Filed 6–7–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Logistics Agency

Privacy Act of 1974; New Record System

AGENCY: Defense Logistics Agency (DLA), DoD.

ACTION: Notice of a new record system subject to the Privacy Act.

SUMMARY: The Defense Logistics Agency proposes to add a new record system subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice July 8, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mr. David Henshall, DLA-XAM Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6130. Telephone (202) 274-6234.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published in the Federal Register as follows:

FR Doc. 85-10237 (50 FR 22897) May 29, 1985 (DoD Compilation)
FR Doc. 85-30123 (50 FR 51898) December 20, 1985
FR Doc. 86-17259 (51 FR 27443) July 31, 1986
FR Doc. 86-19035 (51 FR 30104) August 22, 1986
FR Doc. 87-21654 (52 FR 35304) September 18, 1987
FR Doc. 87-22481 (52 FR 37495) October 7, 1987
FR Doc. 88-03220 (53 FR 04442) February 16, 1988
FR Doc. 88-06658 (53 FR 09965) March 28, 1988

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on May 27, 1988, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 3, 1988.

S322.51 DLA-LZ

SYSTEM NAME:

Training Cohort Data Base.

SYSTEM LOCATION:

Naval Automation Data Facility (NAVDAF), Naval Training Center, Building 2040, Orlando, FL 32813-5013.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military officers and enlisted personnel who entered active duty after July 1, 1971, or who became a member of a reserve component after October 1, 1979; DoD civilian employees of the military services since December 31, 1976.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized records, some of which are organized into year-of-entry cohorts. These records are copied from existing data files and reports (see Sources below). Longitudinal information consists of Social Security Account Number; demographic and accession-related information such as age, sex, race, ethnicity, mental aptitude scores, physical characteristics, date of entry; military personnel information such as rank, term of service, promotion dates; training and occupational information such as inservice schooling, on-the-job training, and military occuption with corresponding dates; training outcome and job performance measurements; and sparation-related information such as eligibility to reenlist.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113; 10 U.S.C. 131; 10 U.S.C. 136; E.O. 9397.

PURPOSES(S):

The purpose of the system of records is to provide a central facility that will support the DoD training community in the following activites: Reviewing training requirements and assessing occupational trends; examining training attrition patterns, training management options, methods, and efficiency; tracking occupational skill and experience inventories, and changes in occupation pipelines; and developing training, performance, readiness linkages to support research and planning activitives.

ROUTINE USES OR RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the blanket routine uses set forth at the beginning of the DLA listings of systems of records which are also applicable to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic computer tape and disk.

RETRIEVABILITY:

Retrievable by Social Security Account Number.

SAFEGUARDS:

At NAVDAF, tapes are stored in a locked vault in the machine room. This is a controlled access area which can be accessed only by the AP Security Officers, OIC, or tape librarian. Tapes are mounted for processing by use of the Tape Management System whereby each tape contains a unique I.D. and account number. Only authorized users can issue job control instructions at program run time to instruct the operator in mounting appropriate tapes. Back-up tapes are stored in a separate locked vault located at the opposite end of the facility.

Disk storage is protected with passwords at both account and file levels. The password protection also controls type of access to the file.

The original tapes are maintained in a locked room, with restricted access, at Defense Training and Performance Data Center, 3280 Progress Drive, Orlando, FL. 32826-3229

RETENTION AND DISPOSAL:

These files consitute a historical data base and are permanent.

SYSTEM MANAGER AND ADDRESS:

Manager, Training Cohort Data Base, Defense Training and Performance Data Center (TPDC), 3280 Progress Drive, Orlando, FL 32826-3229.

NOTIFICATION PROCEDURES:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System Manager.

Written requests for information should contain SSAN, date of birth, and date of entry into military service, as well as current address and telephone number at which the individual can be reached.

For personal visits, the individual should provide acceptable identification, such as driver's license or military identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for access to records and for contesting contents are contained in DLA Regulation 5400.21, 32 CFR Part 1286.

RECORD SOURCE CATEGORIES:

The military services; the Defense Manpower Data Center, Defense Logistics Agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR. Doc. 88-12863 Filed 6-7-88; 8:45 am]
BILLING CODE 3810-01-M

Department of the Navy

Privacy Act of 1974; New Record System

AGENCY: Department of the Navy, DOD.

ACTION: Notice of a new system of records subject to the Privacy Act.

SUMMARY: The Department of the Navy is adding a new record system subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice July 8, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000, telephone: 202-697-1459, autovon: 227-1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974 have been published in the Federal Register as follows:

FR Doc 86-8485 (51 FR 12908) April 16, 1986
FR Doc 86-10763 (51 FR 18036) May 16, 1986 (Compilation)
FR Doc 86-12448 (51 FR 19884) June 3, 1986
FR Doc 86-19207 (51 FR 30377) August 26, 1986
FR Doc 86-19208 (51 FR 30393) August 26, 1986
FR Doc 86-28835 (51 FR 45931) December 23, 1986
FR Doc 87-1144 (52 FR 2147) January 20, 1987
FR Doc 87-1145 (52 FR 2149) January 20, 1987
FR Doc 87-5783 (52 FR 8500) March 18, 1987
FR Doc 87-9696 (52 FR 15530) April 29, 1987
FR Doc 87-13560 (52 FR 22671) June 15, 1987
FR Doc 87-27707 (52 FR 45946) December 2, 1987
FR Doc 88-10871 (53 FR 17240) May 16, 1988

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on May 16, 1988, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 3, 1988.

N01754-3

SYSTEM NAME:

Navy Child Development Services Program.

SYSTEM LOCATION:

Navy Child Development or Family Service Centers located at various Navy and Marine Corps activities both in CONUS and overseas.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps service members and their families or dependents. In certain locations, DOD civilian employees may be eligible for services.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains personal information such as name; SSN; case no.; home address and telephone number; insurance coverage; names of parents and children; performance rating; complaints; background information, including medical, education references, and prior work experience, information from NIS, the family advocacy program, base security, and state and local agencies; information related to screening, training, and implementation of the Family Home Care program; and reports of fire, safety, housing, and environmental health inspections. Childrens' records will also include developmental profiles.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031; 42 U.S.C. 5106, and Executive Order 9397.

PURPOSE(S):

To develop child care programs that meet the needs of children and families, provide child and family program eligibility and background information; verify health status of children and verify immunizations, note special program requirements; consent for access to emergency medical care; data required by USDA programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Naval Military Personnel Command and Navy and Marine Corps Family Service Centers, including Child Development Centers.

To Federal officials involved in Child Care Services, including child abuse.

To State and local officials involved with Child Care Services if required in the performance of their official duties.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING/ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders or computer disks.

RETRIEVABILITY:

By last name of member and SSN.

SAFEGUARDS:

Records are maintained in monitored or controlled areas accessible only to authorized personnel. Building or rooms are locked outside regular working hours.

RETENTION AND DISPOSAL:

Records are kept for two years after individual is no longer in the Child Development Program and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Child Development Services (NMPC-651), Naval Military Personnel Command, Washington, DC 20370-5000.

NOTIFICATION PROCEDURES:

Written requests may be addressed to the appropriate Navy or Marine Corps activity concerned (see Directory of the Department of the Navy Mailing Addresses). Individuals should provide proof of identity and full name.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the Systems Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from individuals either applying as child care providers or participant of the Family Home Care program; background checks from State and local authorities; housing officers; information from the Family Advocacy program; base security officers and base fire, safety and health officers; and local family home care monitors and parents of children enrolled.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(2). The exemption rule for this system is contained in SECNAVINST 5211.5 series (32 CFR Part 701).

[FR Doc. 88-12862 Filed 6-7-88; 8:45 am]

BILLING CODE 3810-01-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that

the Naval Research Advisory Committee Panel on Next Generation Computer Resources will meet on June 27–29, 1988. The meeting will be held at the Applied Physics Laboratory, Johns Hopkins University, Johns Hopkins Road, Laurel, MD 20717. The meeting will commence at 9:00 a.m. and terminate at 5:00 p.m. on June 27; and commence at 8:00 a.m. and terminate at 5:30 p.m. on June 28; and commence at 8:00 a.m. and terminate at 5:00 p.m. on June 29, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members on computer resources. The agenda will include technical briefings and discussions addressing OSD/Joint Service Coordination, the military embedded computer market, Navy program requirements for Next Generation Computer Resources and ruggedization technology. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L. W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Date: June 2, 1988.

Jane M. Virga,

Lieutenant, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 88–12852 Filed 6–7–88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER88-416-000, et al.]

Kansas Power & Light Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 3, 1988.

Take notice that the following filings have been made with the Commission:

1. Kansas Power and Light Company

[Docket No. ER88–416–000]

Take notice that on May 25, 1988, Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated May 3, 1988, with the City of St. John, St. John, Kansas for wholesale electric service to that community. KPL states that this contract provides essentially for a ten year extension of the original terms of the presently approved contract. The proposed effective date is August 1, 1988. In addition, KPL states that copies of the contract have been mailed to the City of St. John and the State Corporation Commission.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. The Connecticut Light and Power Company

[Docket No. ER88–417–000]

Take notice that on May 25, 1988, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to Transmission Service Agreements ("Agreements", described below as "Agreement A" dated December 21, 1987, "Agreement B" dated January 9, 1988, and "Agreement C" dated January 12, 1988) between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) Boston Edison Company (BECO) and, effective February 29, 1988, a proposed termination in accordance with the terms of Agreement A.

CL&P states that: Agreement A provides for service to BECO for the transmission of BECO's purchase of entitlements in electric capacity and associated energy from a certain generating unit on the system of Public Service Electric & Gas Company and of electric system capacity and associated energy from the systems of Long Island Lighting Company and Con Edison Company of New York, Inc.; Agreement B provides for the transmission of BECO's purchase of electric system capacity and associated energy from the system of the Connecticut Municipal Electric Energy Cooperative; and Agreement C provides for the transmission of BECO's purchase of (i) entitlements in electric capacity and associated energy from certain generating units on, and (ii) electric system capacity and associated energy from, the system of The United Illuminating Company.

The transmission charge rate is an annual rate developed in accordance with Appendix A and Exhibits I, II and III thereto of each of the Agreements. The transmission charges are determined by the product of (i) the appropriate annual transmission charge rate (expressed in $/kW-yr) divided by 52 for the weekly charge, or 12 for the monthly charge, and (ii) the number of kilowatts of capacity and energy purchased by BECO during such week or month.

CL&P requests that the Commission waiver its standard notice periods and permit the rate schedule to become effective as of December 21, 1987, and permit Agreement A to terminate in accordance with its own terms, effective February 29, 1988.

WMECO has filed a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and BECO (Boston, MA).

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. The Connecticut Light and Power Company

[Docket No. ER88–418–000]

Take notice that on May 25, 1988, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule and, effective April 30, 1988, a proposed termination in accordance with the terms of said rate schedule, with respect to a Transmission Service Agreement (Agreement) dated November 1, 1987 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) Braintree Electric Light Department (Braintree).

CL&P states that the Agreement provides for service to Braintree for the transmission of the purchase of an entitlement in electric capacity and associated energy from a certain generating unit in which the Connecticut Municipal Electric Energy Cooperative (CMEEC) has an entitlement.

The transmission charge rate is an annual rate developed in accordance with Appendix A and Exhibits I, II and III thereto of the Transmission Agreement. The monthly transmission charge is determined by the product of (i) the appropriate annual transmission charge rate (expressed in $/kW–yr) divided by 12, and (ii) the number of kilowatts of capacity and energy purchased by Braintree during each such month of the Term. Such transmission charge is reduced in recognition of payments made by Braintree to other systems also providing transmission service.

CL&P requests that the Commission waiver its standard notice periods and permit the Agreement (i) to become effective as of November 1, 1987, (ii) to supersede a prior transmission service agreement (CL&P Rate Schedule FERC No. 364, WMECO Rate Schedule FERC No. 289), thus automatically terminating the prior agreement, and (iii) to terminate, in accordance with its own terms, effective April 30, 1988.

WMECO has filing a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and Braintree (East Braintree, MA).

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. The Connecticut Light and Power Company

[Docket No. ER88-419-000]

Take notice that on May 25, 1988, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Service Agreement (Agreement) dated January 6, 1988 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) South Hadley Electric Light Department (South Hadley).

CL&P states that the Agreement provides for service to South Hadley for the transmission of South Hadley's purchase of electric system capacity and associated energy from the system of Littleton Electric Light & Water Department (littleton).

The transmission charge rate is an annual rate developed in accordance with Appendix A and Exhibits I, II and III thereto of the Agreement. The weekly transmission charge is determined by the product of (i) the apropriate annual transmission charge rate (expressed in $/kW-yr) divided by 52, and (ii) the maximum number of kilowatts of capacity and energy South Hadley purchases from Littleton during an hourly period of each such week of the Term. The transmission charge is reduced in recognition of payments made by South Hadley to other systems also providing transmission service.

CL&P requests that the Commission waive its standard notice periods and permit the Agreement to become effective as of January 6, 1988.

WMECO has filed a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and South Hadley.

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER88-420-000]

Take Notice that on May 15, 1988, Public Service Company of New Mexico (PNM) tendered for filing Amendment No. 3 to the Contract for Electric Service between PNM and the City of Gallup, New Mexico (City). Amendment No. 3 provides for an Industrial Incentive Rate under which PNM will grant a rate discount to City to enable City to retain retail customer loads of 3,000 kW or greater and to encourage new loads of 3,000 kW or greater. PNM's proposed discount to City will be in the form of a demand rate discount of $4.80/kW per month to City for each kW sold and delivered by City to such retail customer(s). City agrees to make an at least equal reduction in rates to such retail customer(s) through either a demand or an energy charge reduction.

Copies of the filing have been served upon City and the New Mexico Public Service Commission.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Electric and Gas Company

[Docket No. ER88-413-000]

Take notice that on May 24, 1988, Public Service Electric and Gas Company (PSE&G) on Newark, New Jersey tendered for filing an agreement for the sale of power to Boston Edison Company (Edison). Pursuant to the power sales agreement PSE&G sold to Edison 50 MW of system power during the period January 1, 1988 through January 31, 1988.

PSE&G requests waiver of the Commission's requirements to permit the power sales agreement to become effective as of the commencement of the transaction, January 1, 1988. Copies of the filing have been served upon Edison.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Company

[Docket No. ER88-414-000]

Take notice that on May 24, 1988, Portland General Electric Company (PGE) tendered for filing its revised Average System Cost (ASC) which become effective with service on and after October 1, 1987. This filing includes a revised Appendix 1, Exhibit C of the Residential Purchase and Sale Agreement along with the authorization to implement the tariff change from the Public Utility Commission of Oregon.

PGE states that the filing shows that the base ASC is 34.57 mills/kWh, which when added by the third quarter Power Cost Adjustment of 0.89 mills/kWh results in a net ASC of 35.46.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. The Union Light, Heat and Power Company

[Docket No. ER88-415-000]

Take notice that on May 24, 1988, The Union Light, Heat and Power Company tendered for filing a Service Agreement with the City of Williamstown, Kentucky.

The tendered Service Agreement supersedes an existing agreement dated August 1, 1977. No change in rates or charges is proposed in the tendered Service Agreement. An effective date of August 1, 1987, has been requested.

Copies of the filing were served upon the City of Williamstown, Kentucky, and upon the Kentucky Public Service Commission.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER88-422-000]

Take notice that on May 26, 1988, Wisconsin Electric Power company (Wisconsin Electric) tendered for filing a letter agreement and related revisions to FERC Rate Schedule No. 57. The filing increases the firm contract demand of Wisconsin Public Power Inc. SYSTEM (WPPI SYSTEM) to 78 MW from 50 MW, and increases the firm capacity charge. According to Wisconsin Electric, these changes are occasioned by the transfer of nine industrial customers from Wisconsin Electric's retail service to the City of Menasha's retail service. In exchange for the right to service these customers, WPPI SYSTEM has agreed to purchase the electrical requirements of these customers from Wisconsin Electric for a five-year period. The tendered letter agreement also provides for the sale to the City of Menasha of certain distribution facilities useful in serving these customers, as well as the establishment of two new points of interconnection to augment reliability during the period of transition.

Wisconsin Electric requests an effective date coincident with the full physical integration of the nine industrial customers into the Menasha

electric system or at such other time shortly thereafter as the parties may agree to coincide with the completion of the billing transfer of the nine customers. Wisconsin Electric states that it will promptly notify the commission of this date. Wisconsin Electric states the WPPI SYSTEM joins in the requested effective date. Accordingly, Wisconsin Electric requests waiver of the Commission's notice requirements.

Copies of the filing have been served on the City of Menasha, WPPI SYSTEM and the Public Service Commission of Wisconsin.

Comment date: June 20, 1988, in accordance with standard Paragraph E at the end of this notice.

10. John H. Dickson

[Docket No. ID–2342–000]

Take notice that on May 23, 1988, John H. Dickson tenderd for filing an application for authorization under section 305(b) of the Federal Power Act to hold the following interlocking positions:

Position	Corporation
Treasurer	Massachusetts Electric Company.
Treasurer	New England Power Company.
Treasurer	New England Power Company.
Vice President, Treasurer, Director.	New England Energy Incorporated.
Treasurer, Director	NEES Energy.
Vice President, Treasurer..	England Power Service Company.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Joseph Harrington

[Docket No. ID–2343–000]

Take notice that on May 23, 1988, Joseph Harrington tenderd for filing an application for authorization under section 305(b) of the Federal Power Act to hold the following interlocking positions:

Position	Corporation
Vice President	Narragansett Energy Resources Company.
Vice President	New England Power Company.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

12. Howard W. McDowell

[Docket No. ID 2344–000]

Take notice that on May 23, 1988, Howard W. McDowell tendered for filing an application for authorization under section 305(b) of the Federal Power Act to hold the following interlocking positions:

Position	Corporation
Assistant Treasurer, Controller.	Massachusetts Electric Company.
Controller	New England Power Company.
Controller	The Narragansett Electric Company.
Controller	New England Power Service Company.
Director, Treasurer, Assistant Secretary.	Granite State Electric Company.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

13. Central Vermont Public Service Corporation

[Docket No. ER88–421–000]

Take notice that on May 26, 1988, Central Vermont Public Service Corporation (Central Vermont) tendered for filing, pursuant to Commission Regulations 18 CFR 35, an initial rate of a Purchase Agreement between Central Vermont and Commonwealth Electric Company (CEC).

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

14. Application of Potomac Electric Power Company for authority to Purchase Securities of Other Public utilities

[Docket No. EC88–20–000]

Take notice that on May 25, 1988, Potomac Electric Company (Pepco) tendered for filing its application with the Federal Energy Regulatory Commission, pursuant to section 203 of the Federal Power Act, 16, U.S.C. 824(b), and Part 33 of the Regulations of the Federal Energy Regulatory Commission, 18 C.F.R. 33.1 *et seg.*, for an Order authorizing the purchase or other acquisition of securities of other public utilities for investment purposes only, and not for the purpose of influencing, controlling or merging with any public utility. Pepco proposes to limit its holding, ownership or possesssion of securities to not more than one percent of the permanent outstanding capitalization of any public utility. Additionally, Pepco requests a modification of the reporting requirement contained in 18 C.F.R. 33.8 to require only an annual report, and a waiver of the Exhibit D filing requirement set forth in 18 C.F.R. 33.3 Copies of the application are on file with the Commission and are available for public inspection.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considerd 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.

Lois D. Cashell,

Action Secretary.

[FR Doc. 88–12903 Filed 6–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8761–003; Project No. 3892–001; Project No. 4244–001]

PRODEK, Inc., Georgia-Pacific Corp., Long Lake Energy Corp.; Availability of Environmental Assessments and Findings of No Significant Impact

June 3, 1988.

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 license listed below and has assessed the environmental impacts of each of the proposed developments.

MAJOR LICENSE APPLICATIONS

Project No.	Project Name	State	Water body	Town or nearest county	Applicant
8761-003	Oolagah	Oklahoma	Verdigris River	Rodgers Co	PRODEK, Inc.
3892-001	Thomas/Northumberland	New York	Hudson River	Washington and Saratoga Counties.	Georgia-Pacific Corporation.
4244-001	do	do	do	do	Long Lake Energy Corporation.

An Environmental Assessment (EA) was prepared for each of the above proposed projects. Based on independent analysis of the above actions as set forth in each EA, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, an environmental impact statement for these projects will not be prepared.

Copies of each EA are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12901 Filed 6-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2854-014

Town of Vidalia, Louisiana and Catalyst, Old River Hydroelectric Limited Partnership; Availability of Environmental Assessment and Finding of No Significant Impact

June 3, 1988.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application for an amendment of license listed below and has assessed the environmental impacts of the proposed development.

AMENDMENTS OF LICENSE

Project No.	Project name	State	Water body	Nearest town or county	Applicant
2854-014	Old River	LA	Mississippi and Old Rivers.	Concordia	Town of Vidalia, Louisiana and Catalyst Old River Hydroelectric Limited Partnership.

An Environmental Assessment (EA) was prepared for the above proposed project. Based on an independent analysis of the above action as set forth in the EA, the Commission's staff concludes that this amendment would not have significant effects on the quality of the human environment. Copies of the EA are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12902 Filed 6-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-388-000, et al.]

Trunkline Gas Company et al.; Natural Gas Certificate Filings

June 2, 1988.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP88-405-000]

Take notice that on May 19, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-398-000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install a new delivery point for an existing gas sales customer and to construct and operate certain appurtenant facilities under the certificate issued in Docket No. CP82-426-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to install a new delivery point for Public Service Electric and Gas Company (Public Service) located at approximate milepost 1831.7 on Transco's Caldwell loop in Clifton, Passaic County, New Jersey. Transco proposes to construct and operate a tap, sales meter, regulating station and appurtenances at the subject delivery point which would be designed for a maximum daily rate of 7,200 Mcf. It is indicated that Public Service's total Rate Schedule CD-3 contract demand and firm transportation allocation would remain at 417,749 Mcf per day. Transco states that deliveries to the deliver point would be offset by a corresponding reduction in Transco's deliveries at Public Service's Roseland delivery point.

It is stated that Transco has sufficient capacity to accomplish deliveries at the proposed point without detriment or disadvantage to existing gas sales customers. Transco further states that the addition of the delivery point would have no effect on Transco's peak day or annual volumetric deliveries to Public Service or other existing sales customers.

Comment date: July 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Florida Gas Transmission Company

[Docket No. CP88-404-000]

Take notice that on May 24, 1988, Florida Gas Transmission Company

(FGT), P.O. Box 1188, Houston 77251, filed in Docket No. CP88-404-000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new delivery point for an existing gas sales customer under the certificate issued in Docket No. CP82-553-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT proposes to construct a meter station and appurtenant facilities in Palm Beach County, Florida in order to make sales to Florida Public Utilities Company (FPU). It is stated that the proposed delivery point would provide for delivery of up to 88,660 therms of natural gas per day for FPU.

It is indicated that the total volumes to be delivered would not exceed the presently authorized volume limitation and that the proposed delivery point is not prohibited by FGT's tariff. FGT further states that this proposal would not adversely affect FGT's ability to delivery gas to existing customers and that it would have a negligible impact on FGT's peak day and annual deliveries.

Comment date: July 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP88-399-000]

Take notice that on May 19, 1988, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201 filed in Docket No. CP88-399-000 a request pursuant to § §157.205 and 157.216 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon a sales tap, lateral line and appurtenant facilities under its blanket certificate issued in Docket Nos. CP83-59-000, CP83-59-001 and CP83-59-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Lone Star proposes to abandon its facilities heretofore used to provide gas service to La Salle Refinery (La Salle) in Wichita County, Texas. It is stated that abandonment of the facilities, which primarily consist of approximately 25 feet of 4-inch pipeline, would be accomplished through removal. Lone Star further states that it has not obtained a letter of consent from La Salle. However, the refinery has been dismantled and no gas has been delivered to it since 1978 or earlier, it is asserted. It is also asserted that no other customers are served from the affected facilities. Finally, Lone Star advises that sales to La Salle were made at the appropriate rate as provided by state authorities.

Comment date: July 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP88-403-000]

Take notice that on May 23, 1988, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP88-403-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Specifically, Lone Star requests permission and approval to abandon all of the remaining portion of Line A18, consisting of approximately 660 feet of 4-inch and 19,330 feet of 6-inch, pipeline facilities in Wichita County, Texas.

It is stated that the portion of its Line A18 proposed to be abandoned is a transmission lateral which has heretofore carried gas from Lone Star's Line A to its lines A18-5 and A18-6. Lone Star further states that service to customers served from Lines A18-5 and A18-6 has been terminated with their consent, and that abandonment authorization has been obtained for these lines pursuant to § 157.216(b) of the Commission's Regulations in Docket Nos. CP88-277-000 and CP88-130-000, respectively. It is further stated that no customers have ever been served from the portion of Lone Star's Line A18 proposed to be abandoned, and that the facilities have deteriorated to the extent that significant repair and maintenance expense would be incurred by Lone Star in order to keep the line in service.

Comment date: June 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

Great Lakes Gas Transmission Company

[Docket No. CP88-397-000]

Take notice that on May 16, 1988, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP88-397-000 an application pursuant to section 7(c) of the Natural Gas Act requesting authorization to transport additional gas volumes for TransCanada PipeLines Limited (TransCanada), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that the TransCanada-Great Lakes gas transportation contract dated September 12, 1967, as amended, currently provides for transportation by Great Lakes of up to a maximum of 887,500 Mcf per day of volumes (the actual contract quantity is currently less, based on back-off arrangements previously approved by the Commission) from an existing interconnection between the facilities of Great Lakes and TransCanada on the International Boundary at Emerson, Manitoba, to existing points on the International Boundary located at Sault St. Marie and St. Clair, Michigan (Sault St. Marie and St. Clair Interconnections). Applicant states that TransCanada has requested the transportation of an additional 37,500 Mcf per day to be delivered at the St. Clair Interconnection, which is necessary to enable TransCanada to meet the needs of distribution companies in Eastern Canada who have requested additional service. To provide this service, an Amendatory Agreement dated February 8, 1988, has been executed which provides for an increase in the firm transportation volumes by 37,500 Mcf per day to a total of 925,000 Mcf per day. Great Lakes indicates that it has filed a petition with the Economic Regulatory Administration to amend its existing authorization to import and export gas to provide for these additional volumes.

Comment date: June 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. K N Energy, Inc.

[Docket No. CP88-401-000]

Take notice that on May 20, 1988, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP88-401-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to transport natural gas on behalf of Eaton Corporation, Good Samaritan Health Care Corporation, Coleman Powermate, Inc. and J. A. Baldwin Mfg. Co. (Shippers), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport on behalf of Shippers, on an interruptible basis for a term of one year, up to the Maximum Daily Transportation Quantity of 7,110 Mcf of gas per day. Applicant, it is said, would

receive such gas at existing receipt points located in Fremont County, Wyoming and Weld County, Colorado.

Applicant states that it would redeliver thermally equivalent quantities of gas, for the account of Shippers, at the City Gate Kearney, Nebraska.

For this transportation service, Applicant indicates that it would charge each Shipper a transportation rate of 63.17 cents per Mcf, plus a fuel reimbursement quantity.

Comment date: June 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP88-405-000]

Take notice that on May 24, 1988, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-405-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Panhandle Trading Company (PTC), marketer, under Applicant's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Applicant requests authority to transport up to 15,000 Dt per day on behalf of PTC pursuant to a transportation agreement dated March 31, 1988, among Applicant and PTC. It is stated that the agreement provides for Applicant to receive gas from various existing points of receipt on its system in Illinois, Louisiana, Offshore Louisiana, Tennessee and Texas. Applicant states that it will then transport and redeliver subject gas, less fuel used and unaccounted for line loss to Consumers Power Company in Elkhart County, Indiana for various end-users.

The Applicant further states that the estimated daily and estimated annual quantities would be 3,000 dt and 1,095,000 respectively. It is stated that service under section 284.223(a) commenced on April 1, 1988, as reported in Docket No. ST88-3590.

Comment date: July 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12904 Filed 6-7-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-100053; FRL-3393-2]

Computer Science Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Computer Science Corporation (CSC) will perform work specified in a Delivery Order issued under an existing EPA contract. This work will be done for the EPA Office of Pesticides and Toxic Substances (OPTS), and will require access to certain information submitted to EPA under FIFRA section 7. This information is defined as confidential business information (CBI) in FIFRA section 7(d). This information will be transferred to CSC as authorized by 40 CFR 2.307(h)(3). This action will enable CSC to fulfill the terms of the contract and serves to notify affected persons.

DATE: CSC will be given access to this information no sooner than June 13, 1988.

FOR FURTHER INFORMATION CONTACT:

Catherine S. Grimes, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 212, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-4460).

SUPPLEMENTARY INFORMATION: Under Delivery Order 303 of EPA Contract No. 68-01-7176, CSC will provide, at EPA Regional Offices, data entry services on production data submitted by pesticide procedures under section 7 of FIFRA.

This Delivery Order will not be subcontracted by CSC.

The Office of Pesticide Programs has determined that access by CSC to information on all pesticide chemicals is necessary for the performance of this Delivery Order.

This information is entitled to confidential treatment, having been submitted to EPA under section 7 of FIFRA.

In accordance with the requirements of 40 CFR 2.307(h)(2), CSC shall not use

the information for any purpose other than purpose(s) specified in the contract; shall not disclose the information in any form to a third party without prior written approval from the Agency or affected business; and shall require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. No information will be provided to CSC until the above requirements have been fully satisfied. Records of information provided to CSC will be maintained by the Delivery Order Officer for this contract in the EPA Office of Pesticide and Toxic Substances. All information supplied to CSC by EPA for use in connection with this Delivery Order will be returned to EPA when CSC has completed its work.

Dated: May 27, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-12764 Filed 6-7-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100054; FRL-3393-3]

Research Triangle Institute and Engineering & Economics Research, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Research Triangle Institute (RTI) and its subcontractor, Engineering & Economics Research, Inc. (EER) will perform work specified in a Delivery Order issued under an existing EPA contract. This work will be done for the EPA Office of Pesticide Programs and will require access to certain information submitted to EPA under FIFRA and FFDCA. This information may have been claimed as confidential business information (CBI) by submitters. This information will be made available to RTI and EER as authorized by 40 CFR 2.307(h)(3) and 40 CFR 2.308(h)(2), respectively.

This action will enable RTI and EER to fulfill the terms of the Delivery Order and serves to notify affected persons.

DATE: RTI and EER will be given access to this information no sooner than June 15, 1988.

FOR FURTHER INFORMATION CONTACT:

By mail:

Catherine S. Grimes, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 212, CM#2, 1921 Jefferson Davis Highway Arlington, VA (703-557-4460).

SUPPLEMENTARY INFORMATION: Under Delivery Order 35 of EPA Contract No. 68-01-7350, RTI and EER will evaluate and suggest improvements to office systems for processing old chemicals and amendments to pesticide registrations. This productivity study will enable the Office of Pesticide Programs (OPP) to improve the efficiency and effectiveness of the pesticide registration process.

The Office of Pesticide Programs has determined that access by RTI and EER to information submitted in and with applications for product registration is necessary for the performance of the Delivery Order.

This information may be entitled to confidential treatment, having been submitted to EPA under sections 3 and 6 of FIFRA and obtained under sections 408 and 409 of the FEDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), RTI and EER shall not use the information for any purpose other than purpose(s) specified in the Delivery Order; shall not disclose the information in any form to a third party without prior written approval from the Agency or affected business; and shall require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. No information will be provided to RTI and EER until the above requirements have been fully satisfied. Records of information provided to RTI and EER will be maintained by the Delivery Order Officer for this contract in the Office of Pesticide Programs. All information supplied to RTI and EER by EPA for use in connection with this Delivery Order will be returned to EPA when RTI and EER have completed their work.

Dated: May 27, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-12765 Filed 6-7-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240081; FRL-3392-9]

State Registration of Pecticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 30 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the Federal Register.

DATE: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT:

Owen F. Beeder, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC.

Office location and telephone number: Room 716A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703)-557-7893.

SUPPLEMENTARY INFORMATION: This notice lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in February through April 1988. Receipts of State registrations will be published periodically. Of the following registrations, none involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Alabama

EPA SLN No. AL 88 0001. State of Alabama Dept. of Agriculture & Industries. Registration is for Menthol to be used on honeybee colonies to control honeybee tracheal mites, *Acarapis woodi* Rennie. February 11, 1988.

EPA SLN No. AL 88 0002. E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Asana XL Insecticide 0.66 Emulsible Concentrate to be used on

cotton to control various pests. February 11, 1988.

Arizona

EPA SLN No. AZ 88 0002. Drexel Chemical Co. Registration is for Drexel Dimethoate 2.67 to be used on citrus to control thrips. March 8, 1988.

EPA SLN No. AZ 88 0003. Helena Chemical Co. Registration is for Helena Dimethoate 267 EC to be used on citrus to control thrips. March 8, 1988.

EPA SLN No. AZ 88 0004. Setre Chemical Co. Registration is for Dimethoate 4 EC to be used on citrus to control thrips. March 8, 1988.

EPA SLN No. AZ 88 0005. Setre Chemical Co. Registration is for Dimethoate 267 E.C. to be used on citrus to control thrips. March 8, 1988.

EPA SLN No. AZ 88 0006. J.R. Simplot Co. Registration is for Dimethoate 267 EC to be used on citrus to control thrips. March 8, 1988.

EPA SLN No. AZ 88 0008. USDA-ARS Carl Hayden Bee Research Center. Registration is for Zimecterin to be used on rural areas within southern pinal country to control wild honeybees (killing drones). March 6, 1988.

EPA SLN NO. AZ 88 0009. Nor-Am Chemical Co. Registration is for Carzol SP to be used on apples to control thrips. March 15, 1988.

Arkansas

EPA SLN No. AR 88 0001. FMC Corp. AG Chem. Group. Registration is for Command 4 EC Herbicide to be used on soybeans for preemergency control of various grasses. March 24, 1988.

EPA SLN No. AR 88 0002. Hoechst-Roussel Agri-Vet Co. Registration is for Whip R 1 EC Herbicide to be used on rice for preharvest control of various grasses. March 28, 1988.

California

EPA SLN No. CA 88 0006. Goldsmith Seed, Inc. Registration is for Lorox DF Herbicide Ornamental to be used on lupine grown for seed to control weeds. February 4, 1988.

EPA SLN No. CA 88 0007. Santa Cruz County Agriculture Commission. Registration is for Volck Supreme Spray to be used on blueberries, boysenberries, currants, dewberries, elderberries, gooseberries, and huckleberries to control aphids and spider mite eggs. February 25, 1988.

EPA SLN No. CA 88 0008. Bencich Farms. Registration is for Dusting Sulphur to be used on field-grown chives to control powdery mildew. March 14, 1988.

EPA SLN No. CA 88 0011. E.I. du Pont de Nemours & Co., Inc. Registration is for DuPont Benlate 50 DF Fungicide to be used on pistachios to control shoot blight. April 11, 1988.

Colorado

EPA SLN No. CO 88 0001. Ciba-Geigy Corp., AG Div. Registration is for Ridomil 2E Fungicide to be used on lettuce for use in combintion with protectant fungicides to control downy mildew. February 23, 1988.

EPA SLN No. CO 88 0002. Pennwalt Corp. Registration is for Topsin M 70W Fungicide to be used in-furrow on beans to control *fusarium* spp. and *Rhizoctonia* spp. February 23, 1988.

EPA SLN No. CO 88 0003. Dow Chemical USA. Registration is for Tordon 22K Weed Killer to be used on grainland between crops of small grain and in non-cropland areas to control various weeds. February 23, 1988.

EPA SLN No. CO 88 0004. Platte Chemical Co. Registration is for Clean Crop Diazinon 4% Garden Dust to be used on prairie dog burrows and ground squirrel burrows to control rodent fleas. February 23, 1988.

Connecticut

EPA SLN No. CT 88 0004. Fairfield American Corp. Registration is for Permanone Tick Repellent to be used on clothing to control ticks (chiggers and mosquitoes). April 4, 1988.

EPA SLN No. CT 88 0005. McLaughlin Gormley King Co. Registration is for Evercide Concentrate to be used on *Taxus* species to control adult black vine weevils. April 8, 1988.

Florida

EPA SLN No. FL 88 0004. E.I. du Pont de Nemours & Co. Registration is for Du Pont Lannate LV Insecticide to be used on radishes to control beet armyworms. March 8, 1988.

Georgia

EPA SLN No. GA 88 0002. Pennwalt Corp. Registration is for MANEB Plus Zinc F4 to be used on turnips, mustards, collards, and kale to control downy mildew. March 10, 1988.

EPA SLN No. GA 88 0003. E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Lexone DF Herbicide to be used on winter wheat to control weeds. April 12, 1988.

Idaho

EPA SLN No. ID 88 0001. Valley Chemical Co. Registration is for Valley's Best I Potato Treat Powder, with Bark Dust to be used on potatoes to control *Fusarium* and *Rhizoctonia* diseases. February 22, 1988.

EPA SLN No. ID 88 0002. Wilbur-Ellis Co. Registration is for Soil Prep to be used on Irish potatoes to control verticillium disease. March 22, 1988.

EPA SLN No. ID 88 0003. American Cyanamid Co. Registration is for Thimet 20-G Soil and Systemic Insecticide to be used on barley to control Russian wheat aphids. March 22, 1988.

Iowa

EPA SLN No. IA 88 0002. Elanco Products Co. Registration is for Treflan 5 EC MTF to be used on crambe to control weeds (for seed protection only). April 15, 1988.

Louisiana

EPA SLN No. LA 88 0002. FMC Corp. Ag Chemical Group. Registration is for Command 4 EC Herbicide to be used on various grasses to control weeds. March 4, 1988.

EPA SLN No. LA 88 0003. Hoechst-Roussel Agri-Vet Co. Registration is for Whip R 1EC Herbicide to be used on rice for preharvest control of various grasses. March 18, 1988.

EPA SLN No. LA 88 0004. FMC Corp. Registration is for Command 6 EC Herbicide for preemergence application to various grasses for weed control. April 11, 1988.

EPA SLN No. LA 88 0005. Ciba-Geigy Corp. Registration is for Dual 8E Herbicide to be used on tabasco peppers to control annual annual grasses and certain broadleaf weeds. April 13, 1988.

Maine

EPA SLN No. ME 88 0001. Mobay Corp. Ag. Div. Registration is for Di-Syston 8 to be used on oats to control aphids. April 11, 1988.

Michigan

EPA SLN No. MI 88 0001. Michigan Dept. of Agriculture and Plant Pest Management. Registration is for Menthol to be used on honeybee colonies to control tracheal mites. March 25, 1988.

EPA SLN No. MI 88 0002. Michigan Dept. of Agriculture and Plant Pest Management. Registration is for Dipel 8L Work Killer to be applied to forests to control gypsy moths. April 14, 1988.

EPA SLN No. MI 88 0003. Crystal Refining Co. Registration is for Stoddard Solvent to be used on carrots, dill, parsley, parsnip, and celery field transplant beds to control weeds. April 15, 1988.

Mississippi

EPA SLN No. MS 88 0003. FMC Corp. AG Chem. Group. Registration is for Command 4 EC Herbicide to be used on various grasses to control weeds. March 10, 1988.

Missouri

EPA SLN No. MO 88 0002. Uniroyal Chemical Co. Registration is for Omite 6 E to be used on apples to control motile mites. March 21, 1988.

EPA SLN No. MO 88 0003. Elanco Products Co. Registration is for Treflan 5 EC to be used on crambe to control weeds (for seed production only). April 15, 1988.

Nebraska

EPA SLN No. NE 88 0001. FMC Corp. Registration is for Command 4 EC Herbicide to be used on preemergence soybeans to control various weeds. March 11, 1988.

Nevada

EPA SLN No. NV 88 0001. Wilbur-Ellis Co. Registration is for Wilbur-Ellis Dimethoate 267 to be used on wheat to control aphids (green bugs). March 9, 1988.

New Mexico

EPA SLN No. NM 88 0001. Mobay Corp., Agricultural Chemicals Division. Registration is for Di-Syston 8 to be used on wheat to control aphids and mites. April 5, 1988.

North Carolina

EPA SLN No. NC 88 0001. Mobay Corp. Agricultural Chemical Division. Registration is for Di-Syston 15% Granular to be used on Christmas trees to control aphids, Nantucket pine tip moth, and scales mites. April 6, 1988.

North Dakota

EPA SLN No. ND 88 0001. U.S. Dept. of Agriculture, Animal Plant Health Inspection Service, Damage Control. Registration is for Gas Cartridge for Coyotes to be used on red fox and gray fox dens to control foxes. April 8, 1988.

Oregon

EPA SLN No. OR 88 0001. Ciba-Geigy Corp. Registration is for Igran 80 W Herbicide to be used on cottonwood stands to control weeds. March 13, 1988.

EPA SLN No. OR 88 0002. Platte Chemical Corp. Registration is for Clean Crop R Rampart 10G to be used on hops to control aphids. March 17, 1988.

Pennsylvania

EPA SLN No. PA 88 0001. Morgan International Products, Inc. Registration is for Rethrocide to be used on horses to control biting flies. March 18, 1988.

South Carolina

EPA SLN No. SC 88 0002. Morgan International Products, Inc. Registration is for Rethrocide to be on horses to control biting flies. February 25, 1988.

EPA SLN No. SC 88 0003. PPG Industries. Registration is for Cobra Herbicide to be used on soybeans to control witchweeds (*striga asiatica*). March 9, 1988.

South Dakota

EPA SLN No. SD 88 0001. South Dakota Dept. of Agriculture, Division of Regulatory Services. Registration is for Menthol to be used on honeybee hives to control mites. March 7, 1988.

Tennessee

EPA SLN No. TN 88 0003. FMC Corp. Ag. Chem. Div. Registration is for Command 4 EC Herbicide to be used on soybeans for preemergence control of various weeds and grasses. March 12, 1988.

Utah

EPA SLN No. UT 88 0001. Wilbur-Ellis Co. Registration is for Wilbur-Ellis Dimethoate 267 to be used on fruit and nut crops to control aphids. March 8, 1988.

EPA SLN No. UT 88 0002. Mobay Corp. Registration is for Bayleton 50% WP to be used on various fruit crops to control cytospora canker and wood-rotting organisms (*fomes* and *polyprus*). March 15, 1988.

EPA SLN No. UT 88 0003. Mobay Corp. Registration is for Di-Syston 8 to be used on grasses grown for seed to control aphids and mites. April 12, 1988.

Virginia

EPA SLN No. VA 88 0001. Mobay Corp. Registration is for Nemacur 3 to be used on tobacco to control nematodes, wireworms, flea beetles, and cutworms. April 14, 1988.

EPA SLN No. VA 88 0002. Virginia Department of Forestry. Registration is for Arsenal Applicator Concentrate to be used on white pine for site preparation and release. April 18, 1988.

Washington

EPA SLN No. WA 88 0003. Wilbur Ellis Co. Registration is for Wilbur-Ellis Diuron DF to be used on perennial bluegrass grown for seed to control weeds. March 1, 1988.

EPA SLN No. WA 88 0004. McLaughlin Gormley King Co. Registration is for MGK Big Game Repellent Powder BGR-P to be used on Young Douglas-fir seedlings to control mountain beaver damage March 1, 1988.

EPA SLN No. WA 88 0005. E.I. du Pont De Nemours and Co. Registration is for Karmex DF to be used on established perennial bluegrass as a growth regulator. March 25, 1988.

EPA SLN No. WA 88 0006. Platte Chemical Co. Registration is for "Clean Crop" Diuron 80 WDG to be used on established perennial bluegrass grown for seed. March 25, 1988.

EPA SLN No. WA 88 0007. Uniroyal Chemical Co. Registration is for Omite-6 to be used on pear and apple orchard floors to control spider mites. March 29, 1988.

EPA SLN No. WA 88 0008. Uniroyal Chemical Co. Registration is for Omite-CR to be used on hops to control spider mites. March 31, 1988.

EPA SLN No. WA 88 0009. E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Vendex 50WP Miticide to be used on raspberries to control two-spotted mites. April 13, 1988.

EPA SLN No. WA 88 0010. E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Vendex 4L Miticide to be used on raspberries to control two-spotted mites. April 13, 1988.

Wisconsin

EPA SLN No. WI 88 0001. Griffin Corp. Registration is for Kocide 101 to be used on ginseng to control *Alternaria* leaf and stem blight. April 16, 1988.

EPA SLN No. WI 88 0002. Rohm & Haas Co. Registration is for Goat 1.6E Herbicide to be used on dormant spearmint and peppermint to control certain annual broadleaf weeds. April 18, 1988.

Wyoming

EPA SLN No. WY 88 0002. Mobay Corp. Registration is for Di-Syston 8 to be used on barley to control aphids. February 22, 1988.

EPA SLN No. WY 88 0003. Mobay Corp. Registration is for Di-Syston 8 to be used on barley to control aphids. February 22, 1988.

(Sec. 24 as amended, 92 Stat. 835 (7 U.S.C. 136)).

Dated: May 27, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-12772 Filed 6-7-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL—3391-1]

Air Pollution Control Grants: Maintenance of Effort for FY 86 State of Texas Texas Air Control Board

AGENCY: Environmental Protection Agency.

ACTION: Notice and opportunity for public hearing.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces an opportunity for public hearing and comment on a tentative determination

that the Texas Air Control Board (TACB) should be allowed a reduced Maintenance of Effort (MOE) level for FY86, consistent with section 105(b) of the Clean Air Act (CAA).

Hearing Opportunity: If written requests for a public hearing are received by July 8, 1988 the Agency will hold a hearing in Austin, Texas.

FOR FURTHER INFORMATION CONTACT: Joan E. Brown, State programs Section, Air, Pesticides and Toxics Division, EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-7208, (FTS) 255-7208.

SUPPLEMENTARY INFORMATION: Section 105(b) of the CAA, 42 U.S.C. 7405(b), specifies that "No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator, *after notice and opportunity for public hearing,* determines that a reduction in expenditures is attributable to a non-selective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of government. . . ." [Emphasis added.] This statutory requirement is repeated in EPA's "State and Local Assistance" regulations at 40 CFR 35.210(a).

On July 15, 1985, the TACB submitted an application for a grant for Federal fiscal year 1986 (FY 86) under section 105 of the Clean Air Act. At that time the application indicated that the TACB would meet the MOE requirements of the CAA since state funds appropriated to the program for FY 86 were greater than had been appropriated for FY 85. This appropriation would have been sufficient to allow the TACB to expend at least as much in FY 86 as was expended in FY 85 on other than nonrecurrent expenditures. However, subsequent to submittal of the application, the TACB was required by Executive Order (No. MW-36) from the Governor to structure a plan to achieve a 13% reduction in spending from the existing FY 86-87 State general revenue appropriations, and to implement the plan not later than March 1, 1986. Since the Executive Order directed all State agencies and universities to structure and implement such a plan to achieve a 13% reduction in spending, this appears to qualify as a non-selective reduction in expenditures in the programs of all executive branch agencies of the State of Texas.

As a result of the State budget reduction, the TACB expenditures for FY 86 for other than non-recurrent expenditures were $56,504 less than for FY 85. Therefore, the TACB has requested that the Regional Administrator acknowledge and approve a reduction in the MOE requirement of the CAA effective for FY 86. The MOE reduction, if approved, will allow the FY 86 shortfall in recurrent expenditures of $56,504 and lower the prior MOE level established in FY 85 by this amount. The total recurrent expenditures for FY 86 were $10,643,606 compared to the prior FY level of $10,700,110.

During FY 87, the State of Texas continued its budget reduction efforts, and EPA (Region 6) has authorized FY 87 and FY 88 assistance to TACB only conditionally, requiring complete reporting on the apparent extent of the initial (FY 86) shortfall and resolution of the MOE issue. With considerable effort, the TACB has avoided any further shortfall, and has reported that recurrent expenditures of at least $10,658,366 are expected for FY 87, exceeding the reduced FY 86 level, but not meeting the level established in FY 85. During each of these fiscal years, TACB has substantially met all of its air pollution control program commitments, despite the difficulties of reduced budgets. The current Cooperative Agreement with TACB under section 105 of the CAA calls for State expenditures to meet or exceed the FY 87 level.

This notice provides an opportunity for a public hearing as required by the Clean Air Act. EPA will hold the hearing only if actual requests for a public hearing are received. Unless written requests for a hearing on this request for an authorized reduction in the MOE requirement for FY 86 are received by EPA, Region 6 (Dallas) by July 8, 1988, we will proceed to make a determination as indicated.

Date: May 25, 1988.

Robert E. Layton, Jr.,

Regional Administrator.

[FR Doc. 88-12636 Filed 6-7-88; 8:45 am]

BILLING CODE 6560-50-M

[PP 5G3232/T564; FRL-3393-8]

Triflumizole; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for combined residues of triflumizole and its metabolites containing the 4-chloro-e-trifluoromethyl-aniline moiety (calculated as triflumizole) in or on certain raw agricultural commodities. These temporary tolerances were requested by Uniroyal Chemical Co., Inc.

DATE: These temporary tolerances expire April 1, 1989.

FOR FURTHER INFORMATION CONTACT: By Mail:

Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-1900.

SUPPLEMENTARY INFORMATION: Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06525, has requested in pesticide petition (pp) 5G3232 the establishment of temporary tolerances for combined residues of triflumizole (1-(1-((4-chloro-2(trifluoromethyl) phenyl)imino)-2-propoxyethyl)-1H-imidazole) and its metabolites containing the 4-chloro-2-trifluoromethyl-aniline moiety (calculated as triflumizole) in or on the raw agricultural commodities apples at 0.5 part per million (ppm); grapes at 2.0 ppm; pears at 0.5 ppm; meat and fat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; milk and eggs at 0.05 ppm; meat byproducts of poultry at 0.05 ppm; and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.5 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 400-EUP-64, which is being issued under the Federal insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Uniroyal Chemical Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on

request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 1, 1989. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have significant economic impact on a substanial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: (21 U.S.C. 346a(j)).

Dated: May 31, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–12888 Filed 6–7–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3393–4]

California State Motor Vehicle Pollution Control Standards; Amendments Within the Scope of Previous Waivers of Federal Preemption; Summary of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Scope of Waiver of Federal Preemption.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its exhaust emissions standards and procedures governng light-duty vehicles. The amendments established an "offsets program" for the 1983 model year which allowd manufacturers to certify and sell in California a limited number of federally-certified light-duty vehicles, otherwise unavailable in California. California also adopted amendments which allowed offsetting of diesel particulate emissions for the 1985 model year, established procedures which prohibit manufacturers from carrying over year-end emissions deficits to successive model years and extend the "offsets program" to 1988 and subsequent model years.

EPA finds these amendments to be within the scope of previous waivers of Federal preemption granted to California for its emissions standards applicable to light-duty vehicles and its accompanying enforcement procedures.

DATES: Any objections to the findings in this notice must be filed by July 8, 1988. Otherwise, at the expiration of this 30-day period, these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing in a subsequent **Federal Register** Notice.

ADDRESSES: Any objection to the findings in this notice should be filed with Mr. Charles N. Freed, Director, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Copies of the California amendments at issue in this notice, a decision document containing an explanation of EPA's determination and documents used in arriving at this determination are available for public inspection during normal working hours (8:00 a.m. to 3:00 p.m.) at the Environmental Protection Agency, Central Docket Section, (Docket EN–87–07) Room 4 South, Washington Information Center, 401 M Street SW., Washington, DC 20460. Copies of the decision document can be obtained from EPA's Manufacturers Operations Division by contacting Ms. Bengle as noted below.

FOR FURTHER INFORMATION CONTACT: Carol Bengle and Patrick Schlesinger, Attorney/Advisors, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382–2518.

SUPPLEMENTARY INFORMATION: EPA has determined that CARB's amendments are within the scope of waivers of Federal preemption previously granted pursuant to section 209(b) of the Clean Air Act, as amended (Act).[1] Specifically, the amendments allow a limited number of light-duty vehicles certified to Federal standards, and otherwise unavailable in California, to be sold in the State through 1988 and subsequent model years. These amendments require that the higher emissions of the Federal vehicles be "offset" by the lower emissions of vehicles which are certified to an have emissions below California's standards. The amendments also make California assembly line testing, warranty requirements, compliance test procedures and tune-up label specifications applicable to the federally-certified vehicles brought into California under this program. Further amendments allowed offsetting of diesel particulate emissions for the 1985 model year only and prohibited manufacturers from carrying over year-end emission deficits to successive model years.

These amendments do not undermine California's determination that its standards, in the aggregate, are at least as protective as Federal standards, are not inconsistent with section 202(a) of the Act and raise no new issues regarding previous waivers of Federal preemption. A full explanation of EPA's determination is contained in a decision document which my be obtained from EPA as noted above. Since these amendments are within the scope of previous waivers, a public hearing to consider them is not necessary. However, if any party asserts an objection to these finding by July 8, 1988 EPA will consider holding a public hearing to provide interested persons an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(b) waiver determination and that EPA should reconsider its findings. Otherwise, these findings shall become final at the expiration of this 30-day period.

This decision will affect not only persons in California but also the manufacturers located outside the State who must comply with California's requirements in order to sell motor vehicles in California. For this reason, EPA hereby determines and finds, pursuant to section 307(b) of the Act, that this decision is of nationwide scope and effect.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Additionally, a Regulatory Impact Analysis is not being prepared under Executive Order 12291 for this

[1] 45 FR 54132 (August 14, 1980), 49 FR 18887 (May 3, 1984) [waiver of emissions standards]; 37 FR 14831 (July 25, 1972) and 44 FR 61096 (October 23, 1979) [waiver of emissions warrenty]; 45 FR 54126 (August 14, 1980) [waiver of assembly-line test procedures]; 43 FR 9344 (March 7, 1978), 43 FR 15490 (March 7, 1978) and 43 FR 25729 (June 14, 1978) [waiver of compliance testing requirments].

"within the scope" determination since it is not a rule.

This action is also not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Dated: May 31, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88-12885 Filed 6-7-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 25, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Yvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: None

Title: Section 76.33, Standards for rate regulation

Action: New collection

Respondents: State or local governments, businesses (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden:

1,000 Responses

100,250 Hours

Needs and Uses: The Commission adopted a Second Report and Order in MM Docket No. 84-1296 which concerns the regulation of cable television basic subscriber rates by local franchising authorities and established standards for determining whether a cable system faces effective competition. Section 76.33(a) requires certain documentation to be filed with the Commission by cable operators and franchising authorities which would enable the Commission to resolve disputes concerning applicability of signal availability standard. Section 76.33(b) requires franchising authorities to give formal notice to the public when establishing rates for provision of cable service which provides the public an opportunity to comment.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-12834 Filed 6-7-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Collection.

Title: Project Status Summary.

Abstract: FEMA Form 76-51, Project Status Summary, is used by the Federal Emergency Management Agency to monitor public assistance projects approved under Public Law 93-288, as amended. Applicants for disaster assistance will use the form to describe current permanent restorative project status and outline any problems or circumstances expected to result in the applicant's inability to complete restorative work by the approved termination date or within the cost or scope of work conditions set forth in the approval of the project application. Failure to provide the information on the form could jeopardize the applicant's eligibility for Federal disaster assistance.

Type of Respondents: State or local governments.

Number of Respondents: 500.

Burden Hours: 1,000.

Frequency of Recordkeeping or Reporting: Semi-annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: May 31, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88-12850 Filed 6-7-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200125.

Title: Port of New Orleans Lease Agreement.

Parties: Board of Commissioners of the Port of New Orleans (Board), Continental Grain Company.

Synopsis: The proposed agreement supersedes and cancels the Parties' basic lease (Agreement No. 224-000015, as amended); and provides for the lease of the Original Wharf and Wharf Extension located at Westwego, La.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: June 3, 1988.

[FR Doc. 88-12890 Filed 6-7-88; 8:45 am]

BILLING CODE 6730-01-M

Shipping Conditions in the United States/Korea Trade; Further Enlargement of Time To Repiy to Petition

On March 16, 1988, the Commission published notice of the filing by Navios Management, Inc., d/b/a/ Pacific America Line ("PACAM"), of a petition for rulemaking ("Petition") under section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876 (1)(b) ("section 19"). PACAM, a Panamanian-flag

common carrier in the U.S./Korea trade, had alleged that the cargo preference laws of the Republic of Korea ("ROK"), which reserve for ROK-flag carriers virtually all of ROK's waterborne steel exports, subject to a waiver system, resulted in irreparable harm to PACAM. The notice requested comments from interested parties by April 15, 1988. The comment period was subsequently extended to May 17, 1988, in response to requests for enlargement of time from the U.S. Department of State ("DOS") and from the two ROK-flag carriers whose tariffs PACAM specifically requested be suspended—Hyundai Merchant Marine Co., Ltc. ("Hyundai") and Pan Ocean Shipping Co., Ltd. ("Pan Ocean").

Comments were received from DOS, Hyundai and Pan Ocean. All make reference to the fact that following negotiations in late April between U.S. and ROK government officials, the Korean Maritime and Port Administration ("KMPA") announced, on May 13, 1988 in a letter to the U.S. Embassy in Seoul, that it "is in the process of reviewing current cargo reservation policies including the relaxation of the liner service waiver system," and that "KMPA would take necessary steps so that up to 30% of total volume of steel products" in the U.S.-Korea trade, currently reserved for ROK-flag vessels, "would be released to the open competition."

DOS indicates that it has requested the U.S. Embassy in Seoul to seek further clarification from KMPA on its "intended implementing procedures and their effects on shippers in the U.S. trade." To permit DOS to gather additional details, DOS relays its and the Department of Transportation's request that the comment period be extended to July 1, 1988, "the date on which KMPA proposes to introduce the relaxation of the steel product cargo reservation."

Hyundai and Pan Ocean argue that the KMPA announcement evidences that PACAM's concerns are being satisfied, and that therefore its Petition should be denied and the proceeding discontinued on the ground that no Section 19 relief is warranted. Alternatively, they suggest that if the Commission is not inclined to terminate the proceeding at this time, the comment period should be extended until July 1, 1988, noting KMPA's communication to DOS that it will endeavor to have in place the new regulation opening the steel trade by that date.

The Commission views the KMPA announcement with cautious optimism. The announcement does not effectuate an actual change in ROK policy or regulation, nor is it precise as to what KMPA's actions will be and when they will occur. Moreover, it remains to be seen whether KMPA's indication that it will open "up to 30%" of the trade actually means "30%"of the trade, as interpreted by DOS, or a percentage less than that.

Nevertheless, the anouncement, coupled with DOS' communication with KMPA as to the timing of the intended action, suggests the potential for a satisfactory resolution of this particular complaint as well as progress toward that end. In order to ensure that these recent and soon-anticipated developments receive full consideration by the Commission before it acts upon the Petition, the Commission has determined to extend the comment period to July 15, 1988, to allow time for KMPA to implement its new policy and for all interested parties, including PACAM, to comment on its effectuation.

THEREFORE, IT IS ORDERED, that the period to file additional comments (in an original and 15 copies) in this proceeding is enlarged to July 15, 1988.

By the Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 12907 Filed 6-7-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Cobank Financial Corp.; Application To Engage de Nova 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 nova,* 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 of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 24, 1988.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Cobank Financial Corporation, San Luis Obispo, California; to engage *de novo* in commercial lending pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12824 Filed 6-7-88; 8:45 am]

BILLING CODE 6210-01-M

First Wisconsin Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the

question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or grains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 23, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation,* Milwaukee, Wisconsin; to acquire Milwaukee Title Insurance Service, Inc., Milwaukee, Wisconsin, and thereby engage in general title insurance agency services pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bank Shares Incorporated,* Minneapolis, Minnesota; to acquire Security Insurance Agency, Doland, South Dakota, and thereby engage in general insurance agency activities in a community with a population not exceeding 5,000 pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Doland, South Dakota. Comments on this application must be received by June 30, 1988.

Board of Governors of the Federal Reserve System, June 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12825 Filed 6-7-88; 8:45 am]

BILLING CODE 6210-01-M

Change In Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 23, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hazel Keefe,* Tequesta, Florida; to acquire 30.58 percent of the voting shares of Southern Wisconsin Bancshares, Mineral Point, Wisconsin.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Charlies Travis Henderson,* Oklahoma City, Oklahoma; to acquire an additional 81.64 percent of the voting shares of Choctaw Bancorp, Inc., Choctaw, Oklahoma, and thereby indirectly acquire Choctaw State Bank, Choctaw, Oklahoma.

2. *Joy Osterberg,* to acquire 4.18 percent; William H. Osterberg, to acquire an additional 8.65 percent; Osterberg Land Company, to acquire 4.52 percent; Franklin W. Johnson, to acquire 4.29 percent; and Lee Peterson, to acquire 3.67 percent; (all of Craig, Nebraska); Walter W. Clark, to acquire an additional 21.21 percent; Marcia V. Clark, Custodian for D.J. CLark, to acquire an additional 0.35 percent; and Marcia V. Clark, Custodian for Lori Jo Clark, to acquire an additional 0.35 percent; (all of Omaha, Nebraska); Kirby L. and/or Gay L. Larson, to acquire an additional 2.88 percent; Merlin W. Nelson, to acquire an additional 4.49 percent; Chester L. Andreasen, to acquire 1.13 percent; Stan Andreasen, to acquire 1.13 percent; Layne Baker, to acquire 4.18 percent; R. G. Lindstrom Farms, Inc., to acquire 2.09 percent; Willmer and/or Mildred Moseman, to acquire an additional 4.93 percent; Julie Ann Johnson, to acquire 1.13 percent; Marilee Sue Nelson, to acquire 1.13 percent; and Mutual Insurance Co. of Oakland, to acquire 1.24 percent; (all of Oakland, Nebraksa); of the voting shares of Oakland Financial, Inc., Omaha, Nebraska, and thereby indirectly acquires Farmers and Merchants National Bank of Oakland, Oakland, Nebraska.

Board of Governors of the Federal Reserve System, June 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12826 Filed 6-7-88; 8:45 am]

BILLING CODE 6210-01-M

Montgomery Bancorp 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 June 24, 1988.

A. **Federal Reserved Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Montgomery Bancorp,* Rocky Hill, New Jersey; to acquire 100 percent of the voting shares of Montgomery National Bank, Rocky Hill, New Jersey.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *B.M.J. Financial Corp.,* Bordentown, New Jersey; to acquire 100 percent of the voting shares of Southern Ocean State Bank, Little Egg Harbor Township, New Jersey.

C. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Lexington Bancshares, Inc.,* Lexington, Kentucky; to become a bank

holding company by acquiring 100 percent of the voting shares of The Fayette Banking Company, Lexington, Kentucky, a *de novo* bank.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *FNB Newton Bankshares, Inc.*, Covington, Georgia; to acquire 100 percent of the voting shares of Heritage Trust, Conyers, Georgia.

E. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Midwest Bankcorp, Inc.*, Naperville, Illinois; to acquire 100 percent of the voting shares of Continental Illinois Bank of Deerfield, National Association, Deerfield, Illinois, and Continental Bank of Buffalo Grove, N.A., Buffalo Grove, Illinois.

2. *Shelby County Bancorp, Inc.*, Shelbyville, Illinois; to acquire 100 percent of the voting shares of Strasburg State Bank, Strasburg, Illinois.

F. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Fidelity Bancorp, Inc.*, Medford, Wisconsin; to become a bank holding company by acquiring 99.2 percent of the voting shares of Medford National Bank, Medford, Wisconsin.

2. *Lena Spitzer Limited Partnership*, Streeter, North Dakota; to become a bank holding company by acquiring 58.8 percent of the voting shares of Streeter Insurance Agency, Inc., Streeter, North Dakota, and thereby indirectly acquire State Bank of Streeter, Streeter, North Dakota. Comments on this application must be received by June 30, 1988.

G. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Colorado Western Bancorp, Inc.*, Montrose, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Montrose, Montrose, Colorado.

2. *Miners Bancshares, Inc.*, Frontenac, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Miners State Bank, Frontenac, Kansas.

3. *First Morrill Company*, Omaha, Nebraska; to acquire 100 percent of the voting shares of Security State Bank, Ansley, Nebraska.

4. *Two Rivers Bank Corporation*, Grand Junction, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Grand Junction, Grand Junction, Colorado.

Board of Governors of the Federal Reserve System, June 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12827 Filed 6-7-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0129]

Allergan Hydron, Inc; Premarket Approval of Hydron B. (Polymacon) Bifocal Contact Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Allergan Hydron, Inc., Woodbury, NY, for premarket approval, under the Medical Device Amendments of 1976, of the Hydron B. (polymacon) Bifocal Contact Lens. The supplemental application includes authorization from Salvatori Ophthalmics, Inc., Sarasota, FL, to incorporate information in that firm's approved application for Synsoft® (polymacon) Bifocal Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of March 18, 1988, of the approval of the application.

DATE: Petitions for administrative review by July 8, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On January 21, 1988, Alleran Hydron, Inc., Woodbury, NY 11797, submitted to CDRH a supplemental application (P780007/S28) for premarket approval of the Hydron B (polymacon) Bifocal Contact Lens. The lens is indicated for daily wear by not-aphakic persons with nondiseased (healthy) eyes that require a spherical correction in the power range from −6.00. diopters (D) +4.00 D with up to +3.50 D add power for the correction of presbyopia. The eyes may exhibit astigmatism of 2.00 D or less that does not interfere with visual acuity. The lens is to be disinfected using either a heat (thermal) or a chemical (not heat) disinfection system. The supplemental application includes authorization from Salvatori Ophthalmics, Inc., Sarasota, FL 34234, to incorporate the information contained in its approved premarket approval application for the Synsoft® (polymacon) Bifocal Contact Lens (P840006; Docket No. 85M-0037).

On April 17, 1984, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of P840006 submitted by Salvatori Ophthalmics, Inc. FDA approved that application. On March 18, 1988, CDRH approved the subject supplemental application (P780007/S28) by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David Whipple (HFZ-460), address above.

The labeling of the approved contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a

new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 8, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 27, 1988.

John C. Villforth

Director, Center for Devices and Radiological Health.

[FR Doc. 88–12856 Filed 6–7–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Fortymile River Draft Environmental Impact Statement

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM) prepared a Draft Environmental Impact Statement (DEIS) covering placer mining within portions of the Fortymile River watershed, which drains into Fortymile National Wild, Scenic, and Recreational River.

The Fortymile River watershed is located approximately 120 miles southeast of Fairbanks, Alaska, and encompasses nearly 3.1 million acres of land. The drainage lies within the Upper Yukon-Canada Subregion physiographic province. At issue are the cumulative impacts of multiple placer mining operations on the environment; in particular, water quality and visual resources.

A Proposed Action and four alternatives incorporating management options ranging from emphasis on regulations under 43 CFR 3809 to a "no action" alternative are presented. The Proposed Action evaluates BLM's surface management practices in the affected watershed. Environmental consequences of all the alternatives are analyzed and presented.

DATES: The DEIS will be available for review and comments from approximately June 13, 1988, to August 12, 1988. Comments received after August 12 may be too late to be integrated into the Final EIS (FEIS). Public meetings will be held to take comments on the DEIS at the dates and places listed below: July 26, 1988, at the Noel Wien Library, 1215 Cowles Street, Fairbanks, Alaska; July 27, 1988, at the BLM Anchorage District Office, 6881 Abbott Loop Road, Anchorage, Alaska; and August 3, 1988, at Chicken School, Chicken, Alaska. All meetings begin at 7:00 p.m.

ADDRESSES: Comments on the DEIS should be sent to Richard F. Dworsky, 3809 EIS Project Manager, Alaska State Office, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Richard Dworksy—Project Manager, or Page Spencer—Technical Coordinator, at (907) 271–3114.

Lester K. Rosenkrance,

Acting State Director.

[FR Doc. 88–12858 Filed 6–7–88; 8:45 am]

BILLING CODE 4310–JA–M

Salt Lake District, (UT–020–88–4212–14); Sale of Public Lands in Summit County, Utah, U–54152, U–54153, U–54154; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—sale of public lands; U–54152, U–54153, U–54154.

SUMMARY: The following described land has been examined and identified as suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value shown:

Parcel No.	Legal description	Acreage	Value	Preference right bidder
U–54152	T. 3N., R. 10E., SLM Sec. 20, NE¼-NE¼.	40.00	$9,000	
U–54153	T. 1S., R. 6E., SLM Sec. 10, SE¼-SE¼.	40.00	10,000	
U–54154	T. 1N., R. 8E., SLM Sec. 18, NE¼-NE¼.	40.00	9,000	

The above described land will be sold in order to dispose of lands which because of location and other characteristics are difficult and uneconomical to manage. The sale is consistent with the Bureau's planning system and the public interest will be served by offering these lands for sale.

The lands described are hereby segregated from appropriation under the public lands laws, including the mining laws, pending disposition of this action.

The above described land will be offered for sale on August 17, 1988, by sealed bid under competitive procedures. All bids must be received by 10 a.m. on August 17, 1988, at the Bureau of Land Management (BLM) Salt

Lake District Office at 2370 South 2300 West, Salt Lake City, Utah 84119. Bids will be open and a high bidder declared at 11 a.m. on August 17, 1988. No bids will be accepted for less than the appraised fair market value shown above.

Bids may be made by a principal or duly qualified agent. Qualified bidders include: Citizens of the United States 18 years of age or over; a corporation subject to the laws of any state or of the United States; a state, instrumentality or political subdivision authorized to hold property; and any entities capable of holding lands or interests therein under the laws of the state within which the lands to be conveyed are located. Entities include, but are not limited to, associations, partnerships, and other legal entities.

Each bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior, BLM, for not less than one-third of the amount bid and shall be enclosed in a sealed envelope clearly marked "Bid for Public Land, Tract Number U_____" (tract numbers are shown above). If two or more bids for the same amount are received, the apparent high bidder shall be determined by supplemental biddings pursuant to 43 CFR 2711.3–1(c).

The terms and conditions applicable to the sale are:

1. The high bidder shall submit the remainder of the full bid amount within 90 days from date of sale. Failure to submit the full bid price prior to, but not including the 90th day following the sale, shall result in the disqualification of the bidder and the deposit shall be forfeited.

2. The authorized officer may reject the highest qualified bid and release the bidder from his/hers obligation and withdraw the tract for sale, if he determines that consummation of the sale would be inconsistent with provisions of any existing law or collusive or other activities have hindered or restrained free and open bidding or consummation of the sale would encourage or promote speculation in public lands.

3. The patent will contain a reservation for ditches and canals and be subject to all valid existing rights.

4. All minerals will be reserved to the United States inlcuding the right of ingress or egress for mineral development.

5. The United States does not, by the terms of this sale, guarantee to any party physical or legal access to the tract of land being sold.

6. In the event that any of the lands offered for sale are not sold on the date of the sale, they shall continue to be offered for sale at the appraised fair market value on the third Wednesday of each succeeding month after that date until sold or until further notice. Any person wishing to purchase any of these lands after the initial date of sale must present his/her bida to the BLM office shown above accompained by a certified check, postal money order, bank draft or cashier's check for not less than one-third of the amount bid. All applicable terms and conditions as listed above will continue to apply regardless of when the land is actually sold except there will be no preference right bidder privilege after the original date of sale.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, BLM, 2370 South 2300 West, Salt Lake City, Utah, 84119. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Deane H. Zeller,

District Manager.

Date: May 25, 1988.

[FR Doc. 88–12859 Filed 6–7–88; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ–920–08–4220–10; A–9608]

Arizona; Partial Cancellation of Withdrawal Application

May 31, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of partial cancellation.

SUMMARY: Withdrawal Application A–9608 has been withdrawn by the Soil Conservation Service.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011 (602) 241–5534.

SUPPLEMENTARY INFORMATION: The Soil Conservation Service, Department of Agriculture, filed withdrawal application A–9608 on June 21, 1976, in support of the Harquahala Watershed Project. A right-of-way permit has been granted to the Flood Control District of Maricopa County for the purpose of constructing, operating and maintaining this project and a withdrawal is not required. The Soil Conservation Service has withdrawn their request and the application is cancelled insofar as it affects the following described land:

Gila and Salt River Meridian, Arizona

T. 2 N., R. 8. W.,
Sec. 17, N½.

The area described contains 320 acres in Maricopa County.

The land has been determined suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The land will continue to be segregated from appropriation under the public land laws, including the mining laws.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–12830 Filed 6–7–88; 8:45 am]

BILLING CODE 4310-32-M

National Park Service

Upper Delaware Scenic and Recreational River; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: June 24, 1988, 7:00 PM.*

INCLEMENT WEATHER RESCHEDULE DATE: July 8, 1988.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764–0159; 717–729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 USC 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to

*Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

land and water use in the Upper Delaware region. The agenda for the meeting will surround General business of the Council; Delaware River Basin Commission plans for drought warning regulation changes; tree harvesting seminar.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council. P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Alec Gould,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 88-12922 Filed 6-7-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-406-408 (Preliminary)]

Electrolytic Manganese Dioxide from Greece, Ireland, and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-406-408 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Greece, Ireland, and Japan of electrolytic maganese dioxide (EMD), provided for in item 419.44 of the Tariff Schedules of the United States,[1] that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 15, 1988.

[1] EMD is also provided for in subheading 2820.10.00 of the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: George L. Deyman (202-252-1193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background—These investigations are being instituted in response to a petition filed on May 31, 1988, by Chemetals, Inc., Baltimore, MD, and Kerr-McGee Chemical Corp., Oklahoma City, OK.

Participation in the investigations—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on June 20, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact George Deyman (202-252-1103) not later than June 16, 1988, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions—Any person may submit to the Commission on or before June 22, 1988, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary of the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: June 2, 1988.

[FR Doc. 88-12880 Filed 6-7-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-377 (Final)]

Internal Combustion Engine Forklift Trucks from Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)), that an industry in the United States is materially injured by reason of imports from Japan of internal combustion engine forklift trucks with lifting

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

capacity of 2,000 to 15,000 pounds,[2] provided for in item 692.40 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission also determines, pursuant to section 735(b)(4)(a), that there is not material injury by reason of massive imports of the subject LTFV merchandise from Nissan Motor Co., LTD (Nissan) and Toyo Umpanki Co., LTD over a short period of time to the extent that it is necessary to impose the duty retroactively.[3]

Background

The Commission instituted this investigation effective November 24, 1987, following a preliminary determination by the Department of Commerce that imports of certain internal combustion engine forklift trucks from Japan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 23, 1987 (52 FR 48582). The hearing was held in Washington, DC, on April 13, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 31, 1988. The views of the Commission are contained in USITC Publication 2082 (May 1988), entitled "Internal Combustion Engine Forklift Trucks from Japan: Determination of the Commission in Investigation No. 731–TA–377 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 2, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–12881 Filed 6–7–88; 8:45 am]

BILLING CODE 7020-02-M

[2] Such trucks are operator-riding forklift trucks, powered by gasoline, propane, or diesel fuel, of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. This determination also includes imports of less-than-complete forklift trucks defined as imports which include a frame by itself or a frame assembled with one or more component parts.

[3] Commissioner Eckes dissented with respect to critical circumstances on imports from Nissan.

Requests for Comments Concerning the Institution of a Section 751(b) Review Investigation; Porcelain-On-Steel Teakettles From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731–TA–299 (Final), Porcelain-on-Steel Cooking Ware from Taiwan.

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist sufficient enough to warrant the institutions of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review the Commission's affirmative determination in investigation No. 731–TA–299 (Final), Porcelain-on-Steel Cooking Ware from Taiwan. The purpose of the proposed 751 review investigation, if instituted, would be to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of porcelain-on-steel teakettles from Taiwan if the antidumping duty order regarding such merchandise were to be modified or revoked.[1]

FOR FUTHER INFORMATION CONTACT: Daniel Leahy (202–252–1182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–724–0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION: On November 26, 1986, the Commission published in the **Federal Register** its determination in investigation No. 731–TA–299 (Final), Porcelain-on-Steel Cooking Ware from Taiwan (51 FR 42946). The Commission determined that an industry in the United States was materially injured by reason of imports from Taiwan of porcelain-on-steel cooking ware which had been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). On December 2, 1986, the Department of Commerce issued an antidumping order, notice of which was published in the **Federal Register** (51 FR 43416).

On April 21, 1988, the Commission received a request filed on behalf of M. Kamenstein, Inc., pursuant to section 751(b) of the Act, to review its affirmative determination in investigation No. 731–TA–299 (Final), as it pertains to porcelain-on-steel teakettles. Under § 207.45 of the Commission's Rules of Practice and Procedure, "In the absence of good cause shown, no investigation under this section shall be instituted within 24 months of the date of publication of the notice of suspension or determination." Notice of the Commission's determination was published in the **Federal Register** of November 26, 1986. The petitioner contends that the circumstances of this case constitute "good cause" for conducting an immediate review.

On May 11, 1988, the Commission received a submission, filed on behalf of General Housewares Corporation (GHC), opposing the § 751 review request. Counsel for GHC states that contrary to the allegations in the review request, GHC did not permanently cease teakettle production in March of 1987. According to counsel, GHC has produced teakettles as recently as December of 1987 and still maintains its teakettle production capacity. GHC contends that it has only temporarily suspended teakettle production while a design group develops a new generation of teakettle shapes that can be profitably produced. In its submission, GHC notes that teakettles are but one of 100's of individual cookware items subject to the Commission's final determination. Counsel for GHC argues that temporary suspension of production of one or more items cannot warrant the reversal of a final affirmative determination. Counsel further contends that the allegations in the request do not come close to meeting the Commission's standard for a showing of "good cause." Therefore, according to counsel, the Commission should give no further consideration to this request for an early review of its determination and should not even submit the matter for comment by interested parties.

On May 13, 1988, an additional submission was filed with the Commission on behalf of M. Kamenstein, Inc. Counsel reiterated that

[1] For purposes of this notice, porcelain-on-steel teakettles are teakettles not having self-contained heating elements, of steel and enameled or glazed with vitreous glasses. Porcelain-on-steel teakettles are provided for in item 654.06 of the Tariff Schedules of the United States and subheading 7323.94.00 of the proposed Harmonized Tariff Schedule of the United States (U.S.I.T.C. Pub. 2030).

their petition seeks a review of the dumping order only as it pertains to teakettles. Counsel also challenged GHC's statement that it has not permanently ceased production of teakettles. Counsel contends that the consumer is being required to pay additional costs (duties) on imports of an item that is simply not made in the United States and may never be made in the United States. Counsel added that this fact underscores why the dumping duty as to teakettles should be revoked, and why there is good cause for an immediate investigation.

Written comments requested—Pursuant to § 207.45(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)(2)), the Commission requests comments concerning whether the following alleged changed circumstances are sufficient to warrant institution of a review investigation: Petitioner alleges that, in March 1987, the sole domestic producer of porcelain-on-steel teakettles ceased production. Petitioner also alleges that the termination of the anitdumping order on porcelain-on-steel cooking ware from Taiwan, insofar as it covers teakettles, would not cause material injury or the threat thereof to a U.S. industry producing the like product.

The Commission also invites comment on the meaning of "good cause." In particular, comments on the intent of the "good cause" standard, as well as the differences between "changed circumstances" and "good cause," are sought. The petitioner made the following assertions in support of its argument for a finding of "good cause": Petitioner claims that GHC, the sole domestic producer of porcelain-on-steel teakettles, must have known prior to the Commission's determination in investigation No. 731-TA-299 (Final) that it planned to cease production of teakettles and that failure to inform the Commission of its plans constitutes misfeasance or fraud on the part of GHC. Second, petitioner asserts that the Commission's original determination was predicated on the supposition that domestic teakettle production would remain viable. Petitioner argues that, since this supposition has proven false, there has been a mistake of fact which renders the original proceeding unfair. The petitioner acknowledged that the concepts of misfeasance, fraud and mistake of law or fact were cited by the Commission in a Memorandum Opinion concerning a prior 751 review request relating to welded carbon steel standard pipes from India as requirements for a finding of good cause for a review investigation before 24 months from the publication of a dumping or subsidy order. The petitioner states that even if this case doesn't fall strictly within the cited criteria a review case is still warranted. According to petitioner, the fact is that there is no domestic production of enamelware teakettles, and therefore consumers are being burdened with additional costs for which no domestic benefit is being accrued. Further, petitioner contends that the cited criteria are too narrow in that they did not contemplate that a domestic producer would cease production so soon after the issuance of a dumping order.

Written submissions—In accordance with § 201.8 of the Commission's rules (19 CFR 201.8), the signed original and 14 copies of all written submissions must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436. All comments must be filed no later than 30 days after the date of publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under § 201.6 of the Commission's rules (19 CFR 201.6). Such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the the top "Confidential Business Data." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other documents in this matter are available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission; telephone 202-252-1000.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: June 3, 1988.

[FR Doc. 88-12879 Filed 6-7-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-254]

Certain Small Aluminum Flashlights and Components Thereof; Denial of Petition for Reconsideration and Disposition of Two Procedural Motions

AGENCY: U.S. International Trade Commission.

ACTION: Denial of petition for reconsideration, grant of motion to supplement petition, and denial of motion to reply.

FOR FURTHER INFORMATION CONTACT: Jack M. Simmons, III, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1098. Hearing impaired individuals may contact the Commission's TDD terminal at 202-252-1810.

SUPPLEMENTARY INFORMATION: On January 25, 1988, the Commission issued an Action and Order finding no violation of 19 U.S.C. 1337. Subsequently, complainant Mag Instrument Inc. (Mag) moved for reconsideration of that determination. Mag also moved to supplement its petition and to reply to the responses to its petition. The Commission has determined to deny the petition for reconsideration, to grant the motion to supplement the petition, and to deny the motion to reply.

Copies of the Commission's Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: June 2, 1988.

[FR Doc. 88-12882 Filed 6-7-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-290-292 and 731-TA-400-404 (Preliminary)]

Thermostatically Controlled Appliance Plugs and Probe Thermostats Therefor From Canada, Hong Kong, Japan, Malaysia, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada, Malaysia, and Taiwan of thermostatically controlled appliance

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

plugs and probe thermostats therefor,[2] provided for in item 711.78 of the Tariff Schedules of the United States, that are alleged to be subsidized by the Governments of Canada, Malaysia, and Taiwan. The Commission also determines, pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada, Hong Kong, Japan, Malaysia, and Taiwan of thermostatically controlled appliance plugs and probe thermostats therefor which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 15, 1988, petitions were filed with the Commission and the Department of Commerce by Triplex Inter Control (USA), Inc., St. Albans, VT, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of thermostatically controlled appliance plugs and probe thermostats therefor from Canada, Malaysia, and Taiwan and by reason of LTFV imports from Canada, Hong Kong, Japan, Malaysia, and Taiwan. Accordingly, effective April 15, 1988, the Commission instituted preliminary countervailing duty investigations Nos. 71–TA–290–292 (Preliminary) and preliminary antidumping investigations Nos. 731–TA–400–404 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 28, 1988 (53 FR 14861). The conference was held in Washington, DC, on May 6, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 31, 1988. The views of the Commission are contained in USITC Publication 2087 (June 1988), entitled "thermostatically Controlled Appliance Plugs and Probe Thermostats Therefor from Canada, Hong Kong, Japan, Malaysia, and Taiwan."

Issued: June 1, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–12883 Filed 6–7–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–282]

Certain Venetian Blind Components; Change of Notice of Investigation

Notice is hereby given that the patent identified in the notice of investigation as U.S. Letters Patent 4,352,285 should be identified as U.S. Letters Patent 4,352,385, and the registered trademark identified as registered Trademark No. 522,363 should be identified as registered Trademark No. 522,365.

The Secretary is requested to publish this Notice in the **Federal Register.**

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

Dated: June 1, 1988.

[FR Doc. 88–12884 Filed 6–7–88; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[No. MC–C–30090]

National Industrial Transportation League—Petition for Declaratory Order On Negotiated Motor Common Carrier Rates

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments.

SUMMARY: The Commission instituted this declaratory order proceeding by decision served April 22, 1988, 53 FR 15454 (April 25, 1989). The due date for comments was set as June 9, 1988. Petitioner, The National Industrial Transportation League, has requested that the time for filing comments be extended to permit full consideration of the issues involved in this proceeding by the Regular Common Carrier Conference and the American Trucking Associations, Inc. The request is reasonable, and will be granted.

DATE: Comments may be filed on or before July 25, 1988.

ADDRESSES: Send an original and 10 copies of comments referring to No. MC–C–30090 to: Room 1324, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to: James E. Barley, Executive Vice President, The National Industrial Transportation League, 1090 Vermont Avenue, NW., Suite 410, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT:

Andrew J. Nosacek, (202) 275–1712

or

Richard B. Felder, (202) 275–7691.

[TDD for hearing impaired: (202) 275–1721].

Decided: June 2, 1988.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 88–12886 Filed 6–7–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration; Applied Science Laboratories

By Notice dated April 4, 1988, and published in the **Federal Register** on April 11, 1988; (53 FR 11918), Applied Science Laboratories, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
4-Methylaminorex (1590)	I
Methadone (9250)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer

[2] For purposes of the investigations, the term thermoststically controlled appliance plug refers to any device designed to connect an electrical outlet (typically, a common wall receptical) with a small cooking appliance of 2,000 watts or less (typically, a griddle, deepfryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of: (1) A probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set. The term probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically, small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

of the basic classes of controlled substances listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration

Dated: May 31, 1988.

[FR. Doc. 88-12839 Filed 6-7-88; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Registration; First State Chemical Co., Inc.

By Notice dated March 22, 1988 and published in the **Federal Register** on March 29, 1988 (53 FR 10160), McNeilab Inc., DBA First State Chemical Company, Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Raw opium (9600)	II
Concentrate of poppy straw (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: May 31, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-12836 Filed 6-7-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Registration; First State Chemical Co., Inc.

By Notice dated March 23, 1988, and published in the **Federal Register** on March 30, 1988; (53 FR 10303), McNeilab Inc., DBA First State Chemical Company, Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Codine (9050)	II
Dihydrocodeine (9120)	II
Oxycodeine (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 31, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-12840 Filed 6-7-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Registration; Marion Laboratories, Inc.

By Notice dated February 8, 1988, and published in the **Federal Register** on February 12, 1988; (53 FR 4234), Analytical Systems, Division of Marion Laboratories, Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Phencylidine (7471)	II
1-piperidinocyclohexanecarbonitrile (8603)	II
Benzoylecgonine (9180)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: May 31, 1988.

[FR Doc. 88-12838 Filed 6-7-88; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances Notice of Registration; McNeilab Inc.

By Notice dated March 30, 1988, and published in the **Federal Register** on April 6, 1988; (53 FR 11353), McNeilab Inc., Welsh and McKean Roads, Spring House, Pennsylvania 19477, made application to the Drug Enforcement Administration to be registered as an importer of difenoxin (9168), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, section 1311.42, the Deputy Assistant Administrator hereby orders that the application submitted by above firm is granted registration as an importer of the basic class of controlled substance listed above.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: May 31, 1988.

[FR Doc. 88-12837 Filed 6-7-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Regulation; Syncates Associates, Inc.

By Notice dated April 6, 1988, and published in the **Federal Register** on April 12, 1988; (53 FR 12087), Syncates Associates, Inc., 10863 Rockley Road, Houston, Texas 77099, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of pentobarbital (2270), a basic class of controlled substance listed in Schedule II.

No comments of objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer

of the basic class of controlled substance listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-12841 Filed 6-7-88; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

[INS #1100-88]

Legalization; English Language/ Citizenship, Standard Test

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of solicitation.

SUMMARY: The Immigration and Naturalization Service (INS) is pursuing the development and implementation of a standardized English language/basic citizenship skills examination for legalization purposes. This notice is to request written proposals from capable entities who are interested in participating in this effort. The Service expects that the existence of a standardized test will facilitate the manner in which those applicants for adjustment to permanent residence under section 245A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), can demonstrate that they comply with the requirements of section 245A(b)(1)(D)(i)(I) of the Act.

DATE: Written proposals from parties interested in developing and administering an alternative testing process based on the criteria in the supplementary information must be received by close of the business day (5:00 p.m.) or or before July 8, 1988.

ADDRESS: Written proposals should be mailed in triplicate to Deputy Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 "I" Street, NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Terrance M. O'Reilly, Deputy Assistant Commissioner, Legalization, (202) 786-3658.

The information collection requirements contained in this notice of proposed rulemaking are being submitted to OMB for clearance in accordance with the provisions of the Paperwork Reduction Act.

Comments concerning and questions regarding the public use information collection contained in this notice should be directed to: Office of Management and Budget, Office of Information Regulatory Affairs, 3225 17th Street and Pennsylvania Avenue, Washington, DC 20010. Attn: DOJ Desk Officer, Room 3208; and to the Department of Justice Clearance office.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA) provides for the legalization of status of certain qualified aliens in a two-step adjustment process. Section 245A(b)(1)(D)(i) of the Immigration and Nationality Act, as amended, Pub. L. 99-603 ("ACT") provides in pertinent part that legalized aliens seeking adjustment of status to permanent resident under section 245A(a) of the Act must, unless otherwise exempt, demonstrate that they ". . . meet the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States). In order to facilitate the manner in which legalized aliens can demonstrate that they comply with these requirements, the INS is pursuing the development and implementation of a standardized English language (reading and writing) and basic citizenship skills examination as an alternative testing method. In response to a public notice published in the Federal Register on March 16, 1988 (FR 8702), to announce the Service's consideration of implementation of a standardized English language/ citizenship test for legalization purposes, a total of six comments from both outside and inside the Service were received. Upon review and careful consideration of all comments, the following changes were made to clarify and expand on the selection criteria which appeared in draft form in the March 16th public notice: Criterion number (3) has been amended to more clearly define the testing entity's latitude in changing the content of the test after its approval by INS; selection criterion number (4) regarding the use of the Federal Textbooks on Citizenship has been changed to add the words, "contents of" before the words "test questions", and to revise the expected date of availability of these texts. This criterion has also been expanded to address concerns expressed by two commentors regarding the proficiency level of the test questions; criterion number (7) has been amended to clarify that it is the applicant who may be required to pay a fee to the testing entity to cover the costs of test administration and scoring. One commentor suggested that the time limit allowed for scoring the tests and reporting the results thereof, be extended from five (5) to fifteen (15) business days to allow the testing entity sufficient time to collect test materials from test centers and score and check results before sending a roster to INS. The commenter expresses concern that a five (5) day turnaround would require scoring at each test site which, while possible, would increase the risk of error in scoring the tests. In an effort to avoid the possibility of errors in the scoring process, while at the same time taking into consideration the time constraints involved in the permanent residence phase of the legalization program, the Service is amending selection criterion number (9) to provide for a fifteen (15) day turnaround. New criterion number (12) was added to require the testing entity to verify the identity of the person taking the test. Finally, the supplementary information is amended to make it clear that the applicant is not restricted to taking the standardized test. This will be implemented as an optional testing method. The applicant can elect to be tested in the required proficiencies by an INS officer. If adopted, the standardized test could be made available to applicants for naturalization as well. Acceptance of a program will not restrict the INS from accepting or developing other alternative testing methods. The agreement by INS to accept any alternative testing program will be non-financial. The INS shall incur no financial liability and intends to make no payments to any entity participating in this program. The INS agrees to accept the test results of the program or programs it has approved.

The following criteria and requirements are provided for submission of proposals: 1) The testing entity must have demonstrated experience in developing and administering reliable standard examinations in the English language and Civics areas (for example, tests are currently recognized and accepted by an established public or private institution of learning recognized as such by a qualified state certifying agency); 2) The testing entity will be required to meet with INS representatives to review the test copy and to set the standards for passing test scores. The test should be structured as a pass/fail and should be accomplished with a maximum of thirty (30) minutes; 3) Once the INS approves a test, the contents will not be changed by the testing entity unless explicitly approved or otherwise directed by the INS; 4) The content of test questions must come from the revised (1987) Federal Textbooks on Citizenship, which are expected to be available from

the Government Printing Office by June, 1988. The level of the test questions must be compatible with the lowest level of readability of these textbooks; 5) The testing entity will be required to field test the examination prior to implementation in cooperation with the INS; 6) The testing entity must be capable of administering the examination over a broad geographical area of not less than a statewide basis. In administering the examination, the testing entity will be responsible for obtaining and managing adequate testing locations, controlling the time period in which the testing is to be accomplished, staffing the administration of the test, and furnishing supplies; 7) Any fee charged the applicant by the testing entity to cover the cost of the administration and scoring of the test will be a reasonable fee to be agreed upon by INS and the testing entity. If the applicant fails the test, he/she shall be given the opportunity to be re-tested one time at no additional cost. The re-test shall be a variance of the initial test; 8) The testing entity will be required to publicize the availability of the examination to legalization applicants. The INS will also maintain a register of the approved entity or entities. This register will be made available to the public; 9) The testing entity will be responsible for scoring the examination and must provide the results to the applicant and INS within fifteen (15) business days from the date of the test; 10) The testing entity must provide for test security. INS will review the procedures the entity has or will establish to provide for test security and integrity; 11) INS reserves the right to determine, through inspection or other means, the continued reliability and integrity of the test. Any testing entity approved by INS may be removed from the register for good cause; and 12) The testing entity will be responsible for verifying the identity of the person taking the test.

Richard E. Norton,

Associate Commissioner, Examinations.

Date: May 10, 1988.

[FR Doc. 88-12843 Filed 6-7-88; 8:45 am]

BILLING CODE 4410-10-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 88-4]

Notice of Inquiry; Works of Architecture

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of inquiry; Works of architecture.

SUMMARY: The Copyright Office of the Library of Congress issues this notice of inquiry to advise the public that it is examining the scope of copyright and other forms of legal protection currently accorded works of architecture and the need, if any, for protection beyond that now available.

The Office invites comments from architects, builders of and contractors for commercial and residential structures, government agencies, academics, and interested members of the public.

DATE: Initial comments should be received by September 16, 1988. Reply comments should be received by November 18, 1988.

ADDRESS: Interested persons should submit ten copies of their written comments as follows:

If sent by mail: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand: Office of the Register of Copyrights, Copyright Office, James Madison Memorial Building, Room 403, First and Independence Avenue SE., Washington, DC 20559.

FOR FURTHER INFORMATION CONTACT: William Patry, Policy Planning Advisor to the Register of Copyrights, Copyright Office, Library of Congress, Washington, DC 20559. Telephone: (202) 287-8350.

SUPPLEMENTARY INFORMATION: At the request of the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary and the Subcommittee on Patents, Copyrights, and Trademarks of the Senate Committee on the Judiciary, the Copyright Office is examining the scope of copyright and other forms of legal protection (e.g., contractual, trade dress, and unfair competition) currently accorded works of architecture as well as two- and three-dimensional works related to architecture. The Office is also examining whether there is a need for protection beyond that currently available, including whether perceived deficiencies are capable of resolution through contractual agreements, what form increased protection, if any, should take, and the impact such enhanced protection would have on competition and the public.

The Berne Adherence Bills

H.R. 1623, the original bill introduced by Representative Kastenmeier on March 16, 1987 to implement the provisions of the Berne Convention for the Protection of Literary and Artistic Property, proposed to amend the Copyright Act to provide explicitly for protection of certain buildings and structures, subject, however, to certain exceptions and limitations. See also H.R. 2962 (Moorhead, introduced on behalf of the Administration).

Section 5 of H.R. 1623 would have amended 17 U.S.C. 102(a) by including "architectural works" as a protected form of subject matter. Section 4(a) defined "architectural works" as: "Buildings and other three-dimensional structures of an original artistic character, and works relative to architecture, such as building plans, blueprints, designs, and models." Section 9 of the bill would have provided a new 17 U.S.C. 120(a) containing limitations on works of architecture, including protection for only the "artistic character and design" and not the "processes or methods of construction;" an exemption for the making, distribution or public display of pictures, paintings, and photographs of works of architecture located in publicly accessible locations; a statutory right of owners of a building embodying an architectural work to have minor alterations made in order to enhance its utility; a prohibition against the seizure or destruction of infringing buildings; and finally, a limitation on the copyright owner's ability to obtain an injunction restraining the construction of an infringing building to only those situations where construction of the building has not been substantially completed.

During the extensive hearings held by the Subcommittee on Courts, Civil Liberties and the Administration of Justice on Berne adherence, there was little reference to whether the requirements of Article 2(1) of the Paris text of Berne [1] mandated the explicit treatment of architectural works in the manner contemplated by H.R. 1623. Two witnesses testified that Berne may not require such treatment. The American Institute of Architects submitted a written statement to the Subcommittee stating a preference for a prevision of the Copyright Act making it an act of infringement to construct a building based on reproduction of copyright architectural plans. The AIA stated, however, that it was not then seeking protection for the buildings themselves.

In light of the minimalist approach taken to Berne adherence and the lack of a consensus that U.S. law needed revision in order to comply with Article

[1] Article 2(1) provides in relevant part that the expression "literary and artistic works" protected under the Convention includes "works of architecture" and "illustrations, maps, plans, sketches and three-dimensional works relevant to architecture."

2(1) of Berne, the clean bill version of H.R. 1623—H.R. 4262—as introduced on March 28, 1988 and passed by the House of Representatives on May 10, 1988, deleted the above-mentioned provisions of H.R. 1623 concerning architectural works, and instead amended the definition of "pictorial, graphic, and sculptural works," in 17 U.S.C. 101 to encompass, in relevant part, "diagrams, models, and technical drawings, including architectural plans."

The Committee Report accompanying the bill explained:

The Committee concluded that existing United States law is compatiable with the requirements of Berne. In addition to a degree of protection under copyright against copying of plans and separable artistic works, additional causes of action for misappropriation may be available under state contract and unfair competition theories.

The bill leaves, untouched, two fundamental principles of copyright law: (1) That the design of a useful article is copyrightable only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from and are capable of existing independently of the utilitarian aspects of the useful article; and, (2) that copyright in a pictorial, graphic, or sculptural work, portraying a useful article as such does not extend to the reproduction of the useful article itself.

Specifically, this means that even though the shape of a useful article, such as a building, may be aesthetically satisfying and valuable, the copyright law does not protect the shape. This test of separability and independence from the utilitarian aspects of the useful article does not depend upon the nature of the design—that is, even if the appearance of the useful article is determined by aesthetic, as opposed to functional considerations, only those pictorial, sculptural or graphic elements, if any, that can be identified separately from the shape of the useful article are copyrightable. Even if the three-dimensional design contains a separate and independent artistic feature (for example, a floral relief design on flatware or a gargoyle on a building), copyright protection would not cover the over-all configuration of the useful article as such.

In the case of architectural works, in addition to protection for separable, artistic sculpture or decorative ornamentation, purely non-functional or monumental structures may be subject to copyright.

The Committee has not amended section 113 of the Copyright Act and intends no change in the settled principle that copyright in a pictorial, graphic, or sculptural work, portraying a useful article as such, does not extend to the reproduction or manufacture of the useful article itself.

H.R. Rep. No. 100-609, 100th Cong., 2d Sess. 50-51 (1988).

The Senate, in its original Berne adherence legislation, proposed provisions on architectural works identical to those found in H.R. 1623. See S. 1301 (introduced May 29, 1987) by Senator Leahy, *see also S. 1971* (Hatch, on behalf of the Administration). Similarly, in reporting S. 1301 out of the Committee on the Judiciary, the Senate deleted these earlier provisions, replacing them instead with a revision to the definition of pictorial, graphic and sculptural works to expressly include architectural plans. This approach was also based on the minimalist theory of Berne adherence and the Committee's conclusion that: "U.S. Copyright Law, as modified by this Act, and other state and federal remedies, protect architectural works to the extent required by the Berne Convention." S. Rep. No. 100-352, 100th Cong., 2d Sess. 9 (1988). At the same time, the Committee noted that it "deliberately leaves in place the final sentence" of the definition of "pictorial, graphic, and sculptural works," which states that the design of a useful article (as also defined in Section 101) such as a building or structure will be considered a protected pictorial, graphic, or sculptural work.

Only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of the utilitarian aspects of the article.

S. Rep. No. 100-352 at 9.

Case Law

The case law has, on the whole, made a distinction between copyright in architectural plans and protection for the architectural structure. See *Demetriades v. Kaufman*, 88 Civ. 0848 (S.D.N.Y. filed March 8, 1988). But Cf. *Herman Frankel Org. v. Wolfe*, 184 U.S.P.Q. 819 (E.D. Mich. 1974). Some courts have awarded damages based on the profits derived by the defendant from sales of the houses. See *Robert R. Jones Associates v. Nino Homes*, CCH Copr. L. Rep. ¶26,165 (E.D. Mich. 1987); *Arthur Ruttenberg Corp. v. Dawney*, 647 F. Supp. 1214 (M.D. Fla. 1986); *Aitken, Hazen, Hoffman, Miller, P.C. v. Empire Construction Co.*, 542 F. Supp. 252 (D. Neb. 1982).

Issues have also arisen over who is the copyright owner of architectural drawings: the commissioning party or the architect. See *Aitken, Hazen, Hoffman & Miller, supra.; Meltzer v. Zoller*, 520 F. Supp. 847 (D.N.J. 1981). Cf. generally, *Aldon Accessories Ltd. v. Spiegel, Inc.*, 738 F.2d 548 (2d Cir.), *cert. denied*, 469 U.S. 982 (1984) with *Easter Seal Society for Crippled Children and Adults of Louisiana, Inc. v. Playboy Enterprises*, 815 F.2d 323 (5th Cir. 1987), *cert. denied*, 56 U.S.L.W. 3661 (U.S. March 28, 1988) (No. 87-482) and *Community for Creative Non-Violence v. Reid*, No. 87-7051 (D.C. Cir. filed May 20, 1988).

Other forms of protection have also been sought for design aspects of buildings. *Associated Hostworks of California v. Moss*, 207 U.S.P.Q. 973 (W.D.N.C.) (trade dress); *White Tower System, Inc. v. White Castle System of Eating Houses Corp.*, 90 F.2d 67 (6th Cir.), *cert. denied*, 302 U.S. 1937 (id.); *Fotomat Corp. v. Cochran*, 437 F. Supp. 1231 (D. Kan. 1977) design of building found to operate as service mark). But cf. *Demetriades v. Kaufman, supra.* (denying preliminary injunction under Lanham Act section 43(a) and finding that plaintiff was unlikely to prove, on the merits, that a residential house had acquired secondary meaning, and stating conclusion that "extending section 43(a) protection to individual, residential designs would work a profound mischief in both the law and the home-building industry.")

Design patent protection has been found applicable to architectural components, although these decisions are sparse and relatively old. *Riter-Conley Mfg. Co.* v. *Aiken*, 203 F. Supp. 669, 702 (3d Cir. 1913); Ex Parte Foshay, 7 U.S.P.Q. 121 (Pat. Off. Bd. App. 1930).

Although unfair competition may provide remedies in some circumstances, courts in specific cases have held unfair competition claims to be preempted by section 301 of the Copyright Act. *Demetriades* v. *Kaufman, supra.*; *Schuchart & Associates* v. *Solo Serve Corp.*, 540 F. Supp. 928, 943-945 (W.D. Tex. 1982).

Contractual arrangements, to the extent enforceable under state law, of course, provide another avenue of protection.

Nature of the Inquiry: The Office's examination touches on three broad areas: (1) The type of copyright and other forms of protection (i.e., contractual, trade dress, unfair competition, etc.) currently accorded works of architecture and works related

to architecture; (2) the need, if any, for protection beyond that now available including whether perceived deficiencies are capable of resolution through private consensual arrangements; and (3) the laws and actual practices of foreign countries in protecting works of architecture and works related to architecture.

Specific Questions: The Office seeks comments in the following specific areas:

Subject Matter and Scope of Protection

1. What forms of legal protection are presently available to protect works of architecture and works related to architecture?

2. Is that protection sufficient to foster the economic and aesthetic interests of those involved in the creation and exploitation of such works?

3. If not, should the creators of works of architecture and works related to architecture have the exclusive right under the Copyright Act or other forms of protection to authorize the reproduction of their works? Should copyright or other forms of protection be extended to buildings or structures provided they contain externally or internally conceptually separable elements as to form or design, and if so, what test should be used to determine whether conceptual separability exists? Cf. *Esquire* v. *Ringer*, 591 F.2d 796 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 908 1979); *Kieselstein-Cord* v. *Accessories by Pearl, Inc.*, 632 F.2d 989 (2d Cir. 1980); *Carol Barnhart, Inc.* v. *Economy Cover Corp.*, 773 F.2d 411 (2d Cir. 1985); *Brandir International, Inc.* v. *Cascade Pacific Lumber Co.*, 5 U.S.P.Q. 2d 1089 (2d Cir. 1987).

If copyright of other forms of protection should not be extended to the buildings or structures themselves, should it be extended to prevent the construction of buildings or structures based on infringing architectural plans, drawings, elevations, or three-dimensional models; and, if so, would such a right, in practice, nevertheless result in protection of buildings or structures?

What is the effect of 17 U.S.C. 102(b) and *Baker* v. *Selden*, 101 U.S. 99 (1879) on such protection? Can a building or structure be a "copy" of architectural plans it is derived from, and if so, does it make a difference whether the building or structure itself constitutes a copyrightable work?

4. What is the effect of architects' use of classical or other public domain elements such as designs that are staple, commonplace, or familiar in the industry?

5. If protection should be granted to buildings or structures, what should the scope of that protection be? Should the standard for infringement of buildings or structures be the same as for traditional copyrighted works of the arts, i.e., substantial similarity? How would recent decisions on the total concept and feel test apply to infringement of works of architecture?

6. Should the owner of the intellectual property rights in a protected work of architecture have the right to prohibit others from constructing an otherwise infringing work if those others have created their work without the aid of the original plans, drawings, elevations, or three-dimensional models, such as by viewing the protected work or by taking its measurements? Should the owner of the intellectual property rights in a protected building have the right to require destruction of completed or uncompleted buildings or structures? What would the appropriate monetary remedies be for infringement of a protected work of architecture or work related to architecture?

7. If the owner of the intellectual property rights in a work of architecture conveys those rights, should he or she still have the right to prohibit alterations to the work, and if so, what kind of alterations, all or only those that are not of a practical or technical nature necessary for maintenance or repair? If he or she should have the right to prohibit alterations (or at least those of a non-utilitarian purpose or effect), and the owner of the material embodiment of the work makes unauthorized alterations, what should the the available remedies be?

Should the owner of the intellectual property rights in a work of architecture ever have the right to require or demand the destruction of infringing buildings or structures or to prohibit their removal from a specific site?

8. Should the owner of the intellectual property rights in a protected work of architecture that has been altered without consent have the right to prohibit his or her association or authorship with the work?

9. Assuming rights should be granted to works of architecture, how long should the term of protection be, and if federal rights are involved, including copyright, what should the extent of preemption of state law be?

10. If rights were granted to works of architecture, should there be an exemption for the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations if the work is located in a place accessible to the public, and if so, should the exemption be limited to noncommercial uses? What role would the fair use doctrine play if protection were granted?

11. Who should the initial owner of intellectual property rights in a protected work of architecture be, and how would the work for hire doctrine in the Copyright Act affect ownership questions? How are questions of ownership of intellectual property rights in works related to architecture presently resolved? Does that system work effectively? How would the copyright concept of joint ownership operate if protection were extended to works of architecture?

Contractual Practices

12. Can private, consensual agreements resolve any perceived deficiencies with the current state of protection for works of architecture and works related to architecture?

Foreign Law and Practices

13. What is the nature and extent of protection granted in foreign countries to works of architecture and works related to architecture and how is that protection actually accorded in practice? Are foreign practices relevant or applicable to practices in the United States?

Copies of all comments received will be available for public inspection and copying between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday, in Room 401, James Madison Memorial Building, Library of Congress, First and Independence Avenue SE., Washington, DC 20559.

Dated: May 26, 1988.

Ralph Oman,

Register of Copyrights.

William J. Welsh,

Deputy Librarian of Congress.

[FR Doc. 88-12872 Filed 6-7-88; 8:45 am]

BILLING CODE 1410-07-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Partially Open Meeting; Literature Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Tranlators Fellowships Section) to the National Council on the Arts will be held on June 10, 1988, from 9:00 a.m.-6:00 p.m., and on June 11, 1988, from 9:00 a.m.-12:00 noon, in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506 has been changed. This notice

supersedes the previous notice in Vol. 53, No. 101 FR 18938, May 25, 1988.

A portion of the meeting will be open to the public on June 11, 1988, from 11:00 a.m.–12:00 noon, for a policy issues discussion.

The remaining sessions of this meeting on June 10, 1988, from 9:00 a.m.–6:00 p.m., and on June 11, 1988, from 9:00 a.m.–11:00 a.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(b) of § 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Martha Y. Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–12932 Filed 6–7–88; 8:45 am]

BILLING CODE 7537–01–M

Media Program Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Program Advisory Panel (Children's Television Series on the Arts Section) to the National Council on the Arts will be held on June 8, 1988, from 10:00 a.m.-6:00 p.m., and on June 9, 1988, from 10:00 a.m.-5:30 p.m., in room M09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

June 6, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–12943 Filed 6–7–88; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (National Resources Section) to the National Council on the Arts will be held on June 22, 1988, from 8:30 a.m.–6:30 p.m., in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel Review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of § 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Martha Y. Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–12831 Filed 6–7–88; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 23–24, 1988, from 9:00 a.m.–5:00 p.m., in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of the meeting will be open to the public on June 23, 1988, from 9:00 a.m.–5:00 p.m., on June 24, 1988, from 9:00 a.m.–11:00 a.m., and on June 24, 1988, from 1:30 p.m.–5:00 p.m., for a guidelines and policy issues discussion.

The remaining sessions of this meeting on June 24, 1988, from 11:00 a.m.–12:30 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(b) of § 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Martha Y. Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–12832 Filed 6–7–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 2 to Regulatory Guide 1.99, "Radiation Embrittlement of Reactor

Vessel Materials," describes general procedures acceptable to the NRC staff for calculating the effects of neutron radiation embrittlement of the low-alloy steels currently used for light-water-cooled reactor vessels.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 31st day of May 1988.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 88–12870 Filed 6–7–88; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and made available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, CE 802–5 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 1 to Regulatory Guide 3.45, "Nuclear Criticality Safety for Steel-Pipe Intersections Containing Aqueous Solutions of Fissile Materials." This guide is being developed to describe procedures acceptable to the NRC staff for preventing criticality accidents in the storage and processing of aqueous solutions of fissile materials in steel-pipe intersections. This guide endorses ANSI/ANS–8.9–1987, "Nuclear Criticality Safety Criteria for Steel-Pipe Intersections Containing Aqueous Solutions of Fissile Material."

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both the guide (including any implementation schedule) and the value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Comments will be most helpful if received by August 5, 1988.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 31st day of May 1988.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 88–12871 Filed 6–7–88; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collections: Proposed 10 CFR 71, Transportation Regulations: Compatibility with the International Atomic Energy Agency (IAEA).

3. The form number if applicable: Not applicable.

4. How often the collection is required: At each shipment of radioactive material in NRC approved packages.

5. Who will be required or asked to report: Licensees subject to 10 CFR Part 71 who transport radioactive material, or who transfer radioactive material to a carrier for transport, in an NRC approved package.

6. An estimate of the number of responses: 350.

7. An estimate of the total number of hours needed to complete the requirement or request: 2,700.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract:

NRC is proposing to add a requirement that a Type B package approved under NRC regulations be assigned a serial number which uniquely identifies each packaging which conforms to the approved design and which is legibly and durably marked on the outside of each packaging. NRC is also proposing to require that a request for renewal of a package design approval certificate or a quality

assurance program approval combine all previously submitted material which is still applicable in a consolidated application for renewal. Lastly, NRC proposes to require that shipment records required under 10 CFR Part 71 identify any NRC approved package by serial number in addition to the model number as presently required.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Vartkes Broussalian (202) 395–3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 18th day of May 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88–12869 Filed 6–7–88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Reactor Designs; Open Meeting

The ACRS Subcommittee on Advanced Reactor Designs will hold a meeting on June 22, 1988, 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, June 22, 1988—8:30 A.M. until the conclusion of business

The Subcommittee will review the draft SER of the Modular HTGR conceptual design.

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 transcript 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. Medhat El-Zeftawy (telephone 202/634–3267) between 7:30 a.m. and 4:15 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.

Date June 2, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–12896 Filed 6–7–88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Thermal Hydraulic Phenomena; Closed Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on June 21, 1988, Room 1046, 1717 H Street NW., Washington, DC.

Most of the meeting will be closed to protect privileged commercial information.

The agenda for the subject meeting shall be as follows:

Tuesday, June 21, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the Westinghouse revised ECCS Evaluation Model for 2-Loop Upper Plenum Injection (UPI) plants.

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 open to the public, 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, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, 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. Paul Boehnert (telephone 202/634–3267) between 7:30 a.m. and 4:15 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.

Date: June 2, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–12897 Filed 6–7–88; 8:45 am]

BILLING CODE 7590-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, June 21–22, 1988, at the Embassy Suites Hotel, 1250 22d Street NW., Washington, DC.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in the Ambassador Room, first floor, at 9:00 a.m. June 21, 1988. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting at 9:00 a.m. in the Consulate Room, also on the first floor, on June 21, 1988.

The full Commission will convene at 2:00 p.m. on June 21, 1988 with a panel of researchers to identify major PPS issues, their implications and appropriateness for PROPAC'S research agenda. The meeting will be held in the aforementioned combined rooms. The full Commission meeting on June 22, 1988 will begin at 9:15 a.m. in the same rooms.

Donald A. Young,

Executive Director.

[FR Doc. 88–12875 Filed 6–7–88; 8:45 am]

BILLING CODE 6820-BW-M

POSTAL SERVICE

Privacy Act of 1974; Computer Matching Program—Postal Service/State of Utah Department of Social Services

AGENCY: United States Postal Service.

ACTION: Notice of Matching Program—U.S. Postal Service/State of Utah Department of Social Services.

SUMMARY: The purpose of this document is to publish notice of the Postal Service's plan to participate in a computer matching program with the State of Utah Department of Social Services to identify any postal employees who owe child support obligations in Utah or monies to Utah as a result of receiving public assistance benefits to which they are not entitled.

DATE: The match is expected to begin about June 1988.

ADDRESS: Send any comments to USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 8121, Washington, D.C. 20260–5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday at this address.

FOR FURTHER INFORMATION CONTACT: Barbara Fuller, Records Office (202) 268–5161.

SUPPLEMENTARY INFORMATION: The Office of Recovery Services of the State of Utah Department of Social Services has legal authority to enforce child support obligations and collect public assistance overpayments and other obligations owed to the State of Utah and its agencies. On May 4, 1987, the Postal Service published notice (52 FR 16324) of a computer match to assist that office in its efforts to identify current postal employees who are (1) absent parents owing child support obligations in the State of Utah, including those owed to the State as a result of benefits paid to dependents; and (2) recipients of Aid to Families with Dependent Children or Medicaid benefits to which they are not entitled. That match resulted in substantial savings to the AFDC and Medicaid programs by locating absent parents of dependent recipients and enforcing the child support obligations of those parents. USPS has agreed to participate in a follow-up match in compliance with the Revised Supplemental Guidance for Conducting Computer Matching Programs issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). Set forth below is the information required by paragraph 5.f.(1) of these guidelines. A copy of this notice has been provided to both Houses of Congress and to the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service (USPS) and State of Utah Department of Social Services (U–DSS).

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the U–DSS will submit to the USPS a computer tape of the names, social security account numbers (SSANs), and dates of birth of persons owing monies under any or all of the following three program areas for which the Office of Recovery Services of the U–DSS has collection enforcement responsibility: (1) Child support, (2) Aid to Families With Dependent Children, and (3) Medicaid. The USPS will match that tape against its payroll system files (USPS 050.020, Finance Records—Payroll System) for the purpose of identifying postal employees who are obligors under any of these three programs and will disclose to the Office of Recovery Services of U–DSS the following information about resultant "hits": Name SSAN, date of birth, home address, facility where employed, and gross wage information.

The validity of "matched" employee/obligor information will be verified by an investigator of the Office of Recovery Services of the U–DSS. Subsequent actions to collect outstanding debts owed by those employees for delinquent child support or benefits paid may include enforcement of standing court orders, service of legal process when a court order has not been issued, or other appropriate action. In those cases involving State Medicaid funding when insurance coverage was in effect, the recipient or insurance carrier or both will be contacted concerning reimbursement. Further, the USPS Inspection Service may participate in the investigation of hits as a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosue of this information is authorized by routine use Nos. 28 and 32 in USPS 050.020, Payroll System (most recently published in 52 FR 6251 of March 2, 1987).

c. *Period of the Match:* The matching program will be on a one-time basis and is expected to begin about June 1988 and end no later than December 1988.

d. *Security:* The USPS personnel who perform the match will (a) have the only USPS access to the U–DSS computer tape, (b) use it for the sole purpose of the match as officially stated and for no other purpose, and (c) safeguard it from unauthorized access. Likewise the postal employee information disclosed to the U–DSS will be used by authorized U–DSS personnel only for the purpose of the match and for no other purpose and will be safeguarded from unauthorized access.

e. *Disposition of Records:* The USPS will neither retain nor copy the tape provided by U–DSS and must return it upon completion of the match. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that no fraud or irregularity has occurred.

f. *Other Comments:* No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 88–12851 Filed 6–7–88; 8:45 am]

BILLING CODE 7710–12–M

SELECTIVE SERVICE SYSTEM

Privacy Act of 1974; Matching Program to Identify Registration Violators

AGENCY: Selective Service System.

ACTION: Notice.

SUMMARY: Pursuant to OMB Memorandum dated May 11, 1982, "Revised Supplemental Guidance for Conducting Matching Program", the Selective Service System Registration Compliance Program for computerized matching of individual records maintained by the Selective Service System against records of other federal and non-federal sources. The notice published in the **Federal Register**, February 19, 1987 (52 FR 5231) is amended by adding to the list of record systems that are matched against the SSS–8 the following system of records:

Office of Personnel Management—OPM/GOVT–1, General Personnel Records—Central Personnel Data File, published in 49 FR 36949 (September 20, 1984).

The matching will begin June 1, 1988.

Congressional Notice

Copies of this report are sent concurrently with publication to the Congress, addressed to the President of the Senate and the Speaker of the House of Representatives.

Dated: May 26, 1988.

Samuel K. Lessey, Jr.,

Director of Selective Service.

[FR Doc. 88–12867 Filed 6–7–88; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2314]

New York; Declaration of Disaster Loan Area

The City of Cohoes, Albany County in the State of New York constitutes a disaster area because of damages from a severe fire which occurred on May 15, 1988. Applications for loans for physical damage may be filed until the close of business on July 26, 1988, and for economic injury until the close of business on February 28, 1989 at the address listed below: Disaster Area 1 Office, Small Business Administration, 15–01 Broadway, Fair Lawn, New Jersey 07410.

or other locally announced locations.

The interest rates are:

Homeowners with credit available elsewhere	8.000%
Homeowners without credit available elsewhere	4.000%
Businesses with credit available elsewhere	8.000%
Businesses without credit available elsewhere	4.000%
Businesses (EIDL) without credit available elsewhere	4.000%
Other (non-profit organizations including charitable and religious organizations)	9.000%

The number assigned to this disaster is 231405 for physical damage and for economic injury the number is 662300.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: May 27, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–12876 Filed 6–7–88; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–0076]

Beneficial Capital Corp.; Revocation of License

Notice is hereby given that the license to operate a small business investment company under the Small Business Investment Act of 1958, as amended (the Act), issued to Beneficial Capital Corp., 645 Fifth Avenue, Suite 1900, New York, New York 10022 has been revoked. Beneficial Capital Corp., was licensed by the Small Business Administration on May 15, 1961.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the revocation was effective on May 5, 1988, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: June 2, 1988.

[FR Doc. 88–12877 Filed 6–7–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 159 (9th Mtg.), Minimum Aviation System Performance Standard for GPS; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given for the 9th meeting of RTCA Special Committee 159 on Minimum Aviation System Performance Standard for GPS to be held on June 29–July 1, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks, (2) approval of the eighth meeting's minutes, (3) review of DOD/FAA activity on GPS selective availability, (4) discussion of Air Force letter concerning 21 satellites, (5) discussion of ICAO FANS/4 Meeting, (6) report of the GPS integrity channel working group, (7) review of EUROCAE WG–28 activities, (8) review of draft documents submitted for the Committee Report, (9) assignment of tasks, (10) other business, and (11) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 26, 1988.

R.E. Reichenbach,

Acting Designated Officer.

[FR Doc. 88–12847 Filed 6–7–88; 8:45 am]

BILLING CODE 4910–13–M

MARITIME ADMINISTRATION

Docket S–829

Intent To Consider a Change in Policy Governing Proceedings Under Section 605(c) of the Merchant Marine Act, 1936, as Amended; Extension of Deadline for Comments

On May 13, 1988, notice was published in the Federal Register (53 FR 17134), Docket S–829, notifying U.S.-flag liner operators operating in the foreign trade that the Maritime Subsidy Board (Board) intends to consider a change in its policy governing proceedings under section 605(c) of the Merchant Marine Act, 1936, as amended, on applications for operating-differential subsidy (ODS). The notice indicated that the Board intends to consider ending its practice of requiring an intervenor to serve the same U.S. coastal area or range of U.S. ports as those involved in the application for ODS in order to obtain standing in a section 605(c) proceeding.

Farrell Lines Incorporated (Farrell) has requested an extension of 30 days to July 9, 1988, in the filing of comments in Docket S–829. However, the Board believes that an extension of 14 days should provide adequate time for Farrell to complete and file its comments in this matter.

The deadline for submitting comments concerning this proposal is extended to 5:00 pm on June 24, 1988.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies).

By Order of Maritime Subsidy Board.

Dated: June 6, 1988.

James E. Saari,

Secretary.

[FR Doc. 88–12994 Filed 6–7–88; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 25]

Surety Companies Acceptable on Federal Bonds; Termination of Authority Voyager Guaranty Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Voyager Guaranty Insurance Company, of Jacksonville, Florida, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

The Company was last listed as an acceptable surety on Federal Bonds at 52 FR 24628, July 1, 1987.

With respect to any bonds currently in force with Voyager Guaranty Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a signficant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Surety Bond Branch, Washington, DC 20227, telephone (202/FTS) 287-3918.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

Dated: May 25, 1988.

[FR Doc. 88-12822 Filed 6-7-88; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

A Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities," announced in the Federal Register June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encourage to so indicate:

The U.S. Elections, State and Local Government: Philippine Political Leaders' Study Program

The Office of Private Sector Programs, Initiative Grants and Bilateral Accords Division will assist in supporting a three-week international exchange program for Filipino political leaders on U.S. local, state, and national government and the November 1988 elections. During the first two weeks of this program, participants will visit two regions of the United States where they will examine different municipal/county and state systems, their structures, decision making processes, and funding relationships with each other and the federal government. The participants will also evaluate the U.S. electoral process and monitor the elections. The remainder of the exchange program will take place in Washington, DC after November 8th, where these leaders will evaluate the potential impact of the Presidential and Congressional elections on U.S.-Filipino relations. Leaders from the Philippines will be selected by USIA representatives abroad. A U.S. not-for-profit institution with knowledge of Filipino social, political and economic issues as well as considerable expertise on American municipal, county, and state government—and access to American political and economic leaders—will design and execute this project.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials which contains proposal guidelines. Please refer to this specific program by name in your letter of interest. This announcement is not a solicitation for proposals. It requests letters of interest from potential grantee institutions. Information on the proposal submission deadline will be forwarded with the application materials.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiatives—Philippine Leaders), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: May 23, 1988.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 88-12868 Filed 6-7-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 110
Wednesday, June 8, 1988

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).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 13, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m., two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-12945 Filed 6-6-88; 11:08 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required that the previously announced closed meeting (FR, 53 FR 19366, Friday, May 27, 1988) on June 1, 1988, include an additional item, which was closed to public observation:

Administrative Action under section 206(h) of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The Board unanimously voted to add this item to the closed agenda. Earlier announcement of this change was not possible.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meeting.
2. Merger under section 205(h) of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Termination of Conservatorship. Closed pursuant to exemption (8).
4. Assistance under section 208(a)(2) of the Federal Credit Union Act. Closed pursuant to exemption (8).
5. Review of Delegations of Authority. Closed pursuant to exemption (2).

The meeting was held at 2:42 p.m., in the Amway Grand Plaza Hotel, Pearl Room/Hotel Concourse Level, Pearl at Monroe, Grand Rapids, Michigan 49503.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357-1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 88-12963 Filed 6-6-88; 12:32 pm]

BILLING CODE 7535-01-M

NATIONAL SCIENCE FOUNDATION

DATE AND TIME:

June 16, 1988; 8:30 a.m. Open Session
June 17, 1988; 8:30 a.m. Closed Session
June 17, 1988; 8:35 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.

STATUS:

Most of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, June 16, 1988. Open Session (8:30 a.m. to 12 Noon)

1. 1988-1989 Budget Overview
2. Major Changes—1980-1988
   a. Programmatic
   b. Administrative
   c. Policy
3. Planning Issues

Thursday, June 16, 1988. Open Session (1:30 to 5:45 p.m.)

3. Planning Issues (continued)
4. Strategic Considerations
   a. Science Trends
   b. Demographics and Education
   c. Agency Relationships
   d. Legislative Agenda

Friday, June 17, 1988. Closed Session (8:30-8:35 a.m.)

5. Minutes—May 1988 Meeting
6. NSB and NSF Staff Nominees

Friday, June 17, 1988. Open Session (8:35-11:00 a.m.)

7. 1990 Budget Consideration
8. NSB Discussion
   a. Positioning NSF for the 1990's
   b. Further Considerations for FY 1990 Budget

Thomas Ubois,

Executive Officer.

[FR Doc. 88-12921 Filed 6-6-88; 8:59 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 6, 1988:

A closed meeting will be held on Tuesday, June 7, 1988, at 2:30 p.m. An open meeting will be held on Friday, June 10, 1988, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10) permit consideration of the schedules matters at a closed meeting.

Commissioner Fleischman, as duty officer, vote to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 7, 1988, at 2:30 p.m., will be:

Formal order of investigation.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Institution of administrative proceeding.

The subject matter of the open meeting scheduled for Friday, June 10, 1988, at 10:00 a.m., will be:

1. Consideration of whether to issue a release that would discuss and synthesize exemptive, interpretive, and no-action positions regarding the applicability of U.S. broker-dealer registration requirements to foreign entities engaged in securities activities involving U.S. investors. The release would propose for comment a rule, based on these positions, that would exempt from broker-dealer registration foreign entities that deal with certain U.S.

institutional investors under limited conditions, or that restrict their activities to certain non-U.S. persons. For further information, please contract John Polanin, Jr. at (202) 272–2848.

2. Consideration of whether to publish for comment a release proposing a regulation that would clarify the extraterritorial application of the registration provisions of the Securities Act of 1933. The regulation would provide generally that any offer or sale that occurs within the United States is subject to section 5 of the Securities Act and any offer or sales that occurs outside of the United States would not be subject to section 5. For further information please contact Samuel Wolff at (292) 272–3246.

3. Consideration of whether to issue a notice of and order for hearing on the application of Advisers Management Trust (the "Fund") and Sentry Life Insurance Company ("Sentry"), Sentry Variable Account II and Sentry Variable Account I ("Separate Accounts") (collectively "Applicants") which requests 'exemptive relief under section 6(c) from section 17(e)(1) of the Investment Company Act of 1940 ("Act") to permit Applicants to implement a distribution plan adopted pursuant to Rule 12b–1 that would allow payments from Fund assets to be received by Sentry, its affiliates and unaffiliated insurance companies whose separate accounts invest in the Fund. For further information, please contact Jeffrey M. Ulness at (202) 272–2026.

4. Consideration of whether to propose for public comment amendments to rules 12b–1 and 17d–3 under the Investment Company Act of 1940 and form N–1A under the Securities Act of 1933. The amendments to rule 12b–1 would clarify and enhance the standards under which a registered open-end management investment company ("fund") can adopt or continue a plan ("12b–1 plan") to use fund assets to pay costs associated with the distribution of fund shares; attempt to ensure that payments under a distribution plan are made on a current basic and are for specific destribution services actually provided to the funds; and prohibit funds with 12b–1 plans from being held out as "no-load" funds or otherwise promoted in a misleading manner. The proposed amendments to Rule 17d–3 would expand the ability of affiliated funds, their principal underwriters and their affiliated persons to finance jointly their distribution efforts without prior Commission approval. Finally, the proposed amendment to form N–1A, the registration statement for funds, would require an additional disclosure to be made regarding the amount of payments under distribution plans. For further information please contact Rochelle G. Kauffman at (202) 272–3045.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Andrew Feldman at (202) 272–2091.

Jonathan G. Katz,
Secretary.
June 2, 1988.

[FR Doc. 88-12913 Filed 6–3–88; 4:30 pm]
BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published June , 1988 (Mailed June 1, 1988).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. (EDT) Wednesday, June 8, 1988.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: A.C. Reynolds High School Auditorium, Reynolds School Road, Asheville, North Carolina.

STATUS: Open.

ADDITIONAL MATTER: The following items are added to the previously announced agenda:

C—POWER ITEMS

*2. Agreement No. TV–74414A with The University of Tennessee at Knoxville for a Cooperative Project to Enhance Telecommunication Capabilities with the Installation and Utilization of an Optical Fiber Demonstration Link.

F—UNCLASSIFIED

7. Agreement with U.S. Department of the Navy Covering Arrangements for Cooperation in Research and Development Work and Related Agreement with American Welding Institute.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–8000 or 632–6000 (News Desk), Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–245–0101.

TVA BOARD ACTION

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business, requires the subject matter of this meeting be changed to include the additional items shown above and that no earlier announcement of this change was possible.

*This item was approved by individual Board members. This would give formal ratification to the Board's actions.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Dated: June 3, 1988.

Marvin Runyon,
Director and Chairman.
C.H. Dean, Jr.,
Director.
John B. Waters,
Director.

[FR Doc. 88–12944 Filed 6–6–88; 11:08 am]
BILLING CODE 8120–01–M

Corrections

Federal Register
Vol. 53, No. 110
Wednesday, June 8, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Technical Information Service

Intent To Grant Exclusive Patent License; Cetus Corp.

Correction

In notice document 88-11107 appearing on page 17744 in the issue of Wednesday, May 18, 1988, make the following correction:

In the first column, in the first paragraph, in the 10th line, "4,670,567" should read "4,670,467".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51704; FRL-3370-5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 88-9233 beginning on page 15130 in the issue of Wednesday, April 27, 1988, make the following corrections:

1. On page 15130, in the second column, in the 10th line, the date should read "June 5, 1988".

2. On the same page, in the second column, in the 15th line, the date should read "June 8, 1988".

3. On page 15131, in the third column, under **P 88-977**, in the second line, "Naphthyl" was misspelled.

4. On page 15133, in the third column, after the 27th line, insert **P 88-1027**.

5. On page 15134, in the first column, under **P 88-1036**, in the fifth line "26,000" should read "26,600".

6. On page 15136, in the third column, the second entry for **P 88-1092** should be removed.

7. On page 15137, in the second column, **P 88-108** should read **P 88-1108**.

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Definition of Small Business Travel Agencies

Correction

In rule document 88-11693 beginning on page 18220 in the issue of Wednesday, May 25, 1988, make the following correction:

§ 121.2 [Corrected]

On page 18821, in the second column, in § 121.2, in the table, in the third column, "$.05" should read "$0.5".

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Federal Register

Wednesday
June 8, 1988

Part II

Nuclear Regulatory Commission

10 CFR Part 71

Transportation Regulations; Compatibility With the International Atomic Energy Agency (IAEA); Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

Transportation Regulations; Compatibility With the International Atomic Energy Agency (IAEA)

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering revising its regulations for the safe transportation of radioactive material to make them compatible with those of the International Atomic Energy Agency (IAEA) and thus with those of most major nuclear nations of the world. Although several substantive changes are proposed in order to provide a more uniform degree of safety for various types of shipments, the Commission's basic standards for packaging radioactive material remain unchanged. These regulations apply to all NRC specific licensees who place in transit byproduct, source, or special nuclear material. The Department of Transportation is also proposing a corresponding rule change to its Hazardous Materials Transport Regulations. In addition, three Petitions for Rulemaking concerning the transportation of low-specific-activity (LSA) radioactive material are considered in this notice, and the criteria for approval of packages for the air transport of plutonium are proposed to be included in 10 CFR Part 71.

DATES: Submit comments by October 6, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to Room 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m.

Examine comments received and regulatory analysis at: The NRC Public Document Room, 1717 H Street NW., Washington, DC.

Obtain single copies of the regulatory analysis from: Donald R. Hopkins, Radiation Protection and Health Effects Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–3784.

FOR FURTHER INFORMATION CONTACT: Donald R. Hopkins, Radiation Protection and Health Effects Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–3784.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1983, the NRC published in the Federal Register (48 FR 35600) a final revision of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material." That revision, in combination with a parallel revision of the hazardous materials transportation regulations of the U.S. Department of Transportation (DOT), brought United States domestic transport safety regulations at the Federal level in accord with relevant portions of the International Atomic Energy Agency (IAEA) design and performance requirements to the extent considered feasible. This action made U.S. regulations compatible with the domestic regulations of most of the international community.

In 1980, 1982, and November 1983, the IAEA assembled revision panels to draft changes for the scheduled 1984 revision of its transportation regulations. The revision was eventually issued in early 1985. The revision panels, which consisted of representatives of most major countries involved in nuclear material transportation, made IAEA regulations more compatible with U.S. regulations through some of their decisions. When NRC and DOT were finalizing their transportation regulations in 1983, they anticipated some of the changes that IAEA was making in the revision of its regulations. The 1983 NRC and DOT rules were written to incorporate, to the extent possible, some of the IAEA changes. Where it was not possible to incorporate IAEA changes, the 1983 rules were written so as to minimize the number of changes that would have to be made when the IAEA revision was completed. Those changes and other changes, not anticipated by NRC and DOT in 1983, are being incorporated into this proposed rulemaking.

Discussion of Major Changes

The major proposed changes to 10 CFR Part 71 are additional accident test requirements for certain packages, an expansion in the number of radionuclides with listed limits for the quantity of radioactive material in a single package, a number of changes in the listed limits, simplification of the fissile material transport classes, updating requirements for shipment of low-specific-activity materials and inclusion of the criteria for air transport of plutonium. These major changes are discussed in the following paragraphs.

Additional Accident Test Requirements

A deep water immersion test has been added to the regulations for a Type B package containing irradiated nuclear fuel in excess of 10^6Ci (37PBq). If such a package were lost in relatively shallow coastal waters due to the sinking or capsizing of a ship or barge, the probability is high that an attempt would be made to recover the package and its contents. The deep immersion test (200 m) requirement, which can be satisfied through engineering evaluation or actual physical test (§ 71.41), is to assure that the package containment system does not rupture from the water pressure at 200 m (656 ft) which would create radiological problems for the recovery operation or an additional environmental risk.

While the NRC staff believes that many existing Type B cask designs now approved by NRC will satisfy this additional test without need for modification, adding the test to the regulations will assure that foreign casks and future U.S. designs will also have the ability to survive deep immersion in water. Adding the deep immersion test to the regulations also introduces the cost involved in having licensees analyze existing package designs to assure and demonstrate that presently approved casks for transporting irradiated nuclear fuel satisfy the requirement. These costs can be avoided if no additional casks of the same design will be fabricated beyond a specified date, and if the casks will not be used for international transport beyond a specified date. In that case, existing casks of the approved design can continue to be used domestically with no further qualification regarding deep immersion.

A dynamic crush test has been added to the Type B package rules in addition to the 9 m (30 ft) drop test for packages which are minimally vulnerable to damage in the drop test, but which have a high potential for radiation hazard if package failure occurs. The crush test requirement, which can also be satisfied through provisions of 71.41, is applied to packages which are both lightweight, up to 500 kg (1100 lb) and low density (up to 1,000 kg/m^3, i.e., 1 g/cm^3), and which have a high radioactive material content (over 1000 A_2) in normal form. The dynamic crush test consists of the drop of a 500 kg (1,100 lb) mild steel plate from 9 m onto the package resting on an unyielding support. IAEA applies the crush test in place of the 9 m drop test for the lightweight packages specified.

In the absence of experience using the crush test, and because the crush test and drop test evaluate different features of a package, NRC is requiring both the crush test and the 9 m drop test for lightweight packages.

There are a limited number of lightweight, low density, and high radioactive material content package designs to which the crush test would apply. Of those, some would pass the crush test so that no package design modification would be necessary. A limited amount of analysis would suffice to requalify the package design to the new standards. If the package design is not used internationally, and no further packages will be fabricated after a specific date, no effort to satisfy the new crush test standard would be necessary, and existing packages could be used in domestic transportation to the end of their useful lives.

Changes in Radionuclide Limits

The preamble to the August 5, 1983 revision of 10 CFR Part 71 (48 FR 35600) noted that the IAEA, as part of its effort to maintain the continued adequacy of the regulations, had adopted a modified system for determining A_1 and A_2 values. The A_1 and A_2 values are the maximum quantity of a particular radionuclide permitted in Type A packages in special form and normal form, respectively. Type A packages are those which provide adequate containment, shielding, and criticality control under normal conditions of transport and minor accidents, but are not designed to survive severe transportation accidents. Instead, there are limits placed on Type A package radioactive material contents. Accident resistant packages are identified as Type B. Radioactive material in special form is either a nondispersible solid or sealed in a capsule so that the dispersibility, and therefore the radiological hazard, of the radioactive material is diminished. This system of limiting the radioactive content of Type A packages to A_1 and A_2 values depending on the dispersibility of the contents is the regulatory scheme for limiting the potential radiological hazard of a serious transportation accident involving packages of radioactive material.

The IAEA's modified system for determining A_1 and A_2 values is based on achieving essentially the same limitations on potential accident radiological hazards as its predecessor system. However, the new system has the following advantages:

1. It states the radiation protection criteria employed more clearly;

2. It incorporates the data and conclusions on metabolic pathways provided over the years 1977–1981 by the International Commission on Radiological Protection (ICRP);

3. It includes dosimetric routes not previously considered; and

4. It harmonizes IAEA regulations with ICRP recommendations on radiological safety in Publications ICRP–26 and ICRP–30.[1]

The effect of IAEA's adoption of this new system for calculating A_1 and A_2 values, and the subsequent incorporation of the new values in U.S. domestic regulations, is that most current A_1 and A_2 values are changing in this revision. Of the 284 radionuclide entries in 10 CFR Part 71, A_2 values are being raised in 129 cases and lowered in 95 cases. Of the A_1 values, 144 are being raised and 73 are being lowered. Based on our most current knowledge of radioactive material shipments in the United States,[2] the economic impacts of these changes are not likely to be large. However, any situations where a potential exists for significant economic impacts as a result of changes in the A_1 or A_2 values should be brought to the Commission's attention in public comments.

The new IAEA system for calculating A_1 and A_2 values is described in Appendix I, "The Q System for the Calculation of A_1 and A_2 Values," of IAEA Safety Series No. 7, "Explanatory Material for the IAEA Regulations for the Safe Transport of Radioactive Material (1985 Edition)." Single copies of Appendix I are available free of charge from the contact for this rulemaking.

Expansion of Radionuclide List

Based on numerous proposals for additions to the table of radionuclides in which limits are listed for the quantity of radioactive material in a single package, IAEA concluded that its table needed to include all radionuclides which have the potential for transportation. As a result, Table A–1 in Part 71, which provides A_1 and A_2 values, has been expanded from 284 entries to 378 entries. Because there now should be few instances where unlisted radionuclides would be transported, the rules for calculating values for unlisted radionuclides have been simplified. The determination of limits for unlisted radionuclides, except for very conservative values, will be made subject to Commission approval.

Simplification of Fissile Material Classes

As a result of the evolution of the fissile material criteria, IAEA recognized that the current three fissile classes could be combined and simplified into a single system. The effect of the simplification of the IAEA system now being proposed for U.S. regulations is:

1. Elimination of the three fissile class designations;

2. Establishment of a single set of criteria for all packages of fissile materials;

3. Use of the transport index as the primary control of accumulations of packages in transport under nearly all conditions; and

4. Use of special arrangements for packages which do not meet the criteria.

Updating of Requirements for Shipment of LSA Material

Over the last two major revisions of its transport regulations, IAEA has been working to update its requirements for shipment of LSA material to recognize the developing need for transportation of irradiated and contaminated parts and equipment from decommissioned nuclear plants. Although these developing LSA requirements were not factored into U.S. regulations when last updated in 1983, it is believed that the IAEA standards are now mature enough to be adopted as U.S. standards.

Updating of the LSA regulations consists of the following:

1. An expansion of the LSA definition to include new types of material;

2. A new definition of "surface contaminated object" (SCO) which is treated in a manner similar to LSA material; and

3. An increase of specific activity limits for nondispersible, nonrespirable forms of LSA material while at the same time limiting the quantity of LSA material which can be shipped in other than a Type B package. The package quantity limit is intended to limit external radiation levels produced as a result of shielding loss in a transportation accident.

The NRC and DOT have overlapping statutory authority for the regulation of the transportation of radioactive material, so the regulations of either or both agencies may apply, depending on the circumstances involved. In order that DOT may act as the only regulator of LSA materials and SCO in quantities below those where external radiation levels become important, the NRC is proposing a new exemption in § 71.10.

[1] ICRP publications are available for sale at Pergamon Press, Inc., Maxwell House, Fairview Park, Elmsford, NY 10523.

[2] Transport of Radioactive Material in the United States, SRI International, SAND84–7174, April 1985, is available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

This provision would exempt licensees from most provisions of 10 CFR Part 71 for shipment and carriage of LSA/SCO materials which can be transported in bulk without packages (LSA–I and SCO–I), and also in their shipment and carriage of LSA/SCO materials in packages containing up to a $2A_1$ quantity of radioactive material. At this level of activity, NRC regulations become applicable and Type B packages, the design of which must be approved by NRC, are required. This action, if adopted, would have the effect of raising the threshold level of radioactivity at which NRC regulates shipments of LSA radioactive material from the Type B quantity level to the level at which Type B packages are required.

Although the regulations proposed by the NRC at § 71.10 specify $2A_1$ as the level of contained radioactive material which causes NRC regulations and Type B packages to become applicable, the IAEA corresponding standard is expressed as an external radiation level at 3 m from the unshielded material or object of 1 rem/hr (10 mSv/h). The value A_1 for any specified radionuclide is the quantity of that radionuclide as a point source which produces a radiation level of 1 rem/h at a distance of 3 m. Considering that LSA and SCO materials are bulk sources with considerable self-shielding, the value $2A_1$ was chosen as a close approximation of the IAEA standard of 1 rem/h at 3 m. The NRC staff, in implementing this IAEA standard in 10 CFR Part 71, takes the position that the radiation level standard would be very difficult for the industry to apply, and that expressing the limit in units of radioactivity would be a more reasonable approach. The approach recommended by the staff will make U.S. regulations inconsistent with those of IAEA, although in an area where there is little international transport. The NRC is particularly interested in whether industry shares the NRC staff view that this limit should be expressed as a limit on radioactivity because a radiation level limit as adopted by IAEA is impractical for the industry to implement.

Part 71 Inclusion of Criteria for Air Shipment of Plutonium

As a result of Congressional action in 1975, Pub. L. 94–79 prohibited the NRC from licensing the air shipment of plutonium in any form until the NRC certified to the Congress that a safe container had been developed and tested such that the container "will not rupture under crash and blast-testing equivalent to the crash and explosion of a highflying aircraft." The NRC developed and certified to the Congress package criteria which it believed corresponded to the Public Law and published these criteria in NUREG–0360, "Qualification Criteria to Certify a Package for Air Transport of Plutonium," dated January 1978. This rulemaking action would amend 10 CFR Part 71 to include these criteria in §§ 71.64, 71.74, and 71.88.

It is the Commission's view that the import/export or domestic transport of plutonium by air pursuant to the requirements of Pub. L. 94–79, as implemented by §§ 71.64, 71.74, and 71.88 of this part, is not affected by section 5062 of Pub. L. 100–203. Certification of containers for the air transport of plutonium for shipments subject to section 5062 and the development of appropriate test criteria for such certification are not within the scope of this proposed rule. These matters will be considered by the Commission separately from this rulemaking action.

Detailed Changes

Detailed substantive changes as proposed by the NRC for public comment are described in the following paragraphs, arranged by section number:

1. Section 71.4, "Definitions," would be amended as follows:

—The definition of fissile classes would be deleted to correspond to the major change of eliminating fissile classes. Fissile material would be defined as the listed radionuclides, and the definition of fissile radionuclides would be deleted.

—The definition of low-specific-activity (LSA) material would be extensively changed to correspond to that of IAEA. The one remaining significant difference would be the addition of a provision in NRC regulations for transportation of contaminated earth in a closed vehicle in unpackaged form. Extensive removal of contaminated earth has been found necessary in decommissioning facilities in the United States, a process apparently not yet required in most other IAEA Member States. Most LSA material would be subsequently exempted from Part 71 control by the provisions of § 71.10, "Exemption for low level materials." The DOT regulations would specify the requirements for packaging LSA material.

—The grandfather clause for special form radioactive material encapsulation would be updated.

—A new definition of Surface Contaminated Object (SCO) would be added to correspond to the parallel definition in IAEA regulations. SCO would be treated in the regulations similarly to LSA materials, with industrial packaging required for most applications. As with LSA materials, most SCO would be exempted from Part 71 control by the provisions of § 71.10, "Exemption for low level materials."

—Some progress has been made in expressing radiological limits in dual units, in that limits currently expressed in units of Rems and Curies now also show the International System of Units (SI) equivalents in Sieverts and Bequerels along with the customary units. In most cases the limits in customary units have been extended to 3 significant figures so they are equal to the limits expressed in SI units to a tenth of a percent. Limits on length, pressure, weight, and temperature are expressed in SI units in the current 10 CFR Part 71, with approximate values in customary units following in parentheses. Those values in customary units have been extended to 3 significant figures to make them equal to the limits expressed in SI units. The objective of this approach is to maintain consistency with international regulations while allowing U.S. shippers to use the units with which they are most familiar. In the case of the special limits on shipments of plutonium in NRC regulations, for which there are no comparable international rules, the limits expressed in SI units have been carried out to three significant figures to make them equal to the U.S. limits expressed in customary units. The end result of this effort is that licensees can use either limit expressed in the regulations as they are considered to be equal. The Commission is particularly interested in public comments on this method of expressing dual units in the regulations.

2. Section 71.5, "Transportation of licensed material," would be amended to correct a number of referencing errors.

3. Section 71.10, "Exemption for low level materials," would be amended to include exemptions for LSA material and SCO. The categories LSA–I and SCO–I would be limited to very low concentrations of radioactive material which would be allowed to be transported unpackaged. Their exemption would be specified separately in a new paragraph 71.10(c), without restriction on total quantity. LSA–II and LSA–III materials and SCO–II would be required to be packaged and thus would be specified in paragraph 71.10(b) of the regulations with a

package quantity limit as explained earlier in this preamble.

4. Section 71.12, "General License: NRC-approved package," would be amended in paragraph (e) to clarify that previously approved fissile material packages would be subject to the restrictions of 71.13, "Previously approved package."

5. Section 71.13, "Previously approved package," would be amended to update the restrictions for packages approved under previous editions of the regulations. In line with parallel provisions of IAEA transport regulations, packages acceptable under the 1967 NRC transport regulations (which correspond to the 1967 IAEA regulations) can no longer be manufactured for use but may continue to be used. These packages must be marked with a unique serial number for identification and control. International use of these packages requires multilateral approval of all countries involved in their use. Packages acceptable under the 1983 NRC transport regulations (which correspond to the 1973 IAEA regulations) can be manufactured until the end of 1995. They will be subject to multilateral approval for international use of the package after 1992. Approvals for any package design can be upgraded to present status through an application which demonstrates that current standards are satisfied.

6. Section 71.14, "General license: DOT specification container," would be amended to reflect the 1985 IAEA grandfathering provisions.

7. Sections 71.16–71.24, general licenses for foreign approved packages and for fissile material packages, would be amended to clarify that those general licenses are subject to the quality assurance requirements of Subpart H of Part 71, requirements already imposed by § 71.101, but whose applicability has been misunderstood by some persons. Minor technical changes have also been introduced to make those general license provisions correspond to standards in IAEA transport rules.

8. Section 71.31, "Contents of application," would be amended so that § 71.31(a)(3) may be satisfied by submittal of a "quality assurance program description" as required by § 71.37 or by "reference to a previously approved quality assurance program" in an application for package design approval. Whether or not an applicant has a previously approved quality assurance program to which it can refer, the applicant should recognize that the package design work necessary to develop the descriptions included in its application for NRC approval must be done under the quality assurance program eventually approved by NRC regarding that package design. To avoid the situation where package design work is invalidated because changes become necessary in a quality assurance program under which the package design work was done, an applicant may wish to obtain approval of its quality assurance program prior to investing a large amount of effort in the package design program. The NRC encourages new applicants, who do not yet have NRC approved quality assurance programs, to obtain at least a partial approval of the design portion of the program. In addition, § 71.37(b) was moved to § 71.31(c) as a more appropriate location.

9. A new § 71.38, "Renewal of a certificate of compliance or quality assurance program approval," would extend the concept of "timely renewal" from the NRC licensing regulations in 10 CFR Parts 30, 40, and 70 to the package design and quality assurance approvals in 10 CFR Part 71. Submittal of an application for renewal of a package certificate of compliance or quality assurance approval at least 30 days prior to its expiration would automatically extend the expiration date of the existing approval until the NRC makes a final decision regarding the application. The provision also would require that a renewal application consolidate the prior approval and all subsequent revisions.

10. Section 71.43, "General standards for all packages," would be amended as follows:

—Paragraph (c) would require that a positive fastening device protect against a rise in internal pressure;

—Paragraph (d) would require that behavior of materials under irradiation be considered in assuring the absence of significant chemical, galvanic, or other reaction among package components and the package contents;

—Paragraph (f) would continue to require that there be "no significant increase" in external radiation levels as a result of subjecting a package to the normal conditions of transport. The IAEA has quantified that increase as being no more than 20 percent, a value the NRC staff believes is too large for the consequences of normal handling or minor accidents which can occur more than once during transport and for which no corrective action normally would be taken. The NRC proposes to continue to approve shielding retention of package designs on an ad hoc basis until what it considers to be a more reasonable standard is determined.

—Paragraph (h) would continue to prohibit continuous venting during transport but would allow intermittent venting when the associated operational controls are approved by the Commission. While the IAEA regulations no longer prohibit continuous venting, that prohibition would be continued in NRC transport regulations because the staff considers continuous venting to be poor engineering practice.

11. Section 71.51, "Additional requirements for Type B packages," would be amended as follows:

—Paragraph (a)(1), as in § 71.43(f), would continue to require that there be "no significant increase" in external radiation levels as a result of subjecting a package to the normal conditions of transport notwithstanding the IAEA's determination that a 20 percent increase constitutes no significant increase; and

—Paragraph (a)(2) would reduce allowable krypton-85 releases under the hypothetical accident conditions from 10,000 Ci to 10 A_2 or 2,700 Ci (10TBq).

12. Section 71.52, "Exemption for low-specific-activity (LSA) packages," would be written as two exemptions from certain Type B package requirements for packages containing only LSA material and transported as exclusive use. The broader of these exemptions, in paragraph (b), would be identical to the present exemption, but would be conditioned to expire one year after the effective date of these amendments. While it is in effect, the broader exemption of paragraph (b) would deal with nonapplicability of accident resistance requirements to quantities of LSA material in excess of Type B quantities in a single package, recognizing the very low toxicity of low-specific-activity radioactive material. Elimination of that provision would subject LSA material in excess of the quantity $2A_1$ in a single package to all Type B package standards including the hypothetical accident conditions. The one-year delay in discontinuing this exemption is intended to allow the industry to develop and fabricate enough Type B waste packages to satisfy the need which would be brought on if this change were adopted. Information provided to NRC indicates that only 5 Type B waste packages are now in existence, while many more would be needed to satisfy the need which would be created if this proposed change were adopted.

The more narrow exemption of paragraph (a) would continue to

recognize the low toxicity of LSA material, but to a lesser extent than paragraph (b), by providing an exemption from the Type B requirement in § 71.51(a)(1) which limits the loss or dispersal of radioactive contents under normal conditions of transport. That provision requires that leak-tightness of a Type B package be demonstrated to a sensitivity of 10^{-6} A_2, a specification unnecessary for the low toxicity LSA material. Although it would be exempt from the sensitivity provision, the LSA package design would still have to satisfy the general standard of § 71.43(f) that there be no loss or dispersal of radioactive contents as a result of subjecting a package to the normal conditions of transport.

13. Section 71.53, "Fissile material exemptions" would be amended as follows:

—Present § 71.53(b), specifying an exemption for natural and depleted uranium which has been irradiated in a thermal reactor, would be deleted because the material described would, by definition, no longer be fissile material; and

—The existing paragraph (g) would be redesignated § 71.53(f), and it would place an additional limitation on the nitrogen-to-uranium atomic ratio.

14. Section 71.57, "Specific standards for a Fissile Class I package," and Section 71.61, "Specific standards of a Fissile Class III shipment," would be deleted because the three fissile classes would be combined into new section 71.59, "Standards for arrays of fissile material packages."

15. A new section 71.61, "Special requirement for irradiated nuclear fuel shipments," imposing a deep water immersion test would be added.

16. Section 71.63, "Special requirements for plutonium shipments," would be revised to accept a suggestion received from the E. I. DuPont Savannah River Plant during the last major revision of 10 CFR Part 71. The suggestion was that the special requirements for solid form and double containment now applied to shipments of all isotopes of plutonium be applied only to the extremely radiotoxic isotopes of plutonium (excluding plutonium-241) and to other extremely radiotoxic radionuclides as well (including, for example, americium-241 and actinium-227). While this suggestion was favorably received, it was beyond the scope of that rulemaking action and is proposed now. While the change seems reasonable from the health and safety standpoint, any significant technical and economic impacts of the change should be included in comments to the Commission so they may be considered.

17. Section 71.73, "Hypothetical accident conditions," would be amended to add a dynamic crush test for certain packages, and to make minor modifications to the thermal test in accordance with changes made to IAEA regulations. Times specified for the immersion tests seem superfluous and have been deleted. Determination of acceptance under the standard should not depend on the time of immersion.

18. Section 71.75, "Qualifications of special form radioactive materials," would add an alternative method to qualify a special form capsule under the tests prescribed in the specified standard of the International Organization for Standardization (ISO).

19. Section 71.77, "Tests for special form radioactive material," would add an alternative method to qualify special form radioactive material under the specific impact and temperature tests prescribed in the specified standard of the ISO.

20. Section 71.95, "Reports," would include a new paragraph (c) to require reporting by a licensee if any conditions of approval in the certificate of approval were not observed in making a shipment.

21. Section 71.97, "Advance notification of shipment of nuclear waste," would be amended to redefine the level of radioactivity at which advance notification is required for shipments of spent nuclear fuel and radioactive waste to make that level more uniform across the range of radionuclides transported. The new level specified would correspond to that at which the DOT imposes its routing and training requirements, and to that at which IAEA imposes additional administrative requirements such as multilateral shipment approvals. The effect of this change is expected to decrease the overall number of packages subject to advance notification and to increase reporting of packages containing large amounts of transuranic alpha-emitting nuclides.

Other Regulatory Actions

Three petitions for rulemaking were filed with the NRC in connection with the rules for transporting LSA radioactive material. The substance of the three petitions was essentially the same, to request that NRC exempt LSA materials from its requirements in 10 CFR Part 71. This would have left the regulation of all LSA material to the DOT. The control of LSA material, as with the control of all radioactive material, was divided at that time, as it is today, between NRC and DOT. DOT controlled carriers and shippers of small quantities of all radioactive materials through provisions in its regulations in 49 CFR, while NRC controlled shippers of fissile material and of larger quantities of other radioactive materials through its regulations in 10 CFR and its licensing program.

The petitioners were the Energy Research and Development Administration (now the U.S. Department of Energy) in its letter dated July 23, 1975 (PRM–71–1); the American National Standards Institute (ANSI) Committee N14 in its letter dated March 10, 1976 (PRM–71–2); and Chem-Nuclear Systems, Inc., in its letter dated November 22, 1976 (PRM–71–4). All three petitioners argued that the control NRC was exerting over transportation of LSA materials created an inconsistency between NRC regulations and those of the IAEA and should be discontinued. A proposed rule that would have provided the exemption for LSA materials requested in the petitions was published by NRC for public comment on August 17, 1979 (44 FR 48234). Prior to finalization of that rule, however, a deficiency in the new LSA requirements, as proposed, was recognized so that the entire LSA proposal, including the exemption, was withdrawn. In the interim, the deficiency in the LSA requirements in the IAEA regulations was recognized and corrected. That correction is discussed under the "major changes" section of this preamble. The correction introduces a distinction between the requirements for small quantities of LSA material and those for larger quantities. This distinction is implemented in the U.S. regulatory scheme as one set of requirements in DOT regulations for small quantities of LSA material and as a different set of requirements in NRC regulations for larger quantities of LSA material.

As a result of these changes in LSA requirements, the exemption requested in the three petitions cannot be provided. The requirements proposed for inclusion in NRC regulations are consistent with the regulatory schemes of both DOT and IAEA. Because the level of radioactivity at which NRC controls are imposed in the proposed rule is somewhat higher than in the current rule, there is an exemption provided in § 71.10 for LSA materials up to the level where NRC regulations impose additional packaging requirements. This exemption is of limited scope, however, and does not satisfy the intent of the petitions. For the above reasons, the NRC plans to deny the three petitions if changes proposed

for the LSA portions of this rulemaking are carried forward to the final rule.

Finding Of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required.

The Commission's "Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes," NUREG–0170,[3] dated December 1977, is NRC's generic environmental impact statement (EIS) covering all types of radioactive material transportation by all modes (road, rail, air, and water). From the Commission's latest survey of radioactive material shipments and their characteristics, "Transport of Radioactive Material in the United States," SAND 84–7174, April 1985, we can conclude that current radioactive material shipments are not so different from those evaluated in NUREG–0170 as to invalidate the results or conclusions of that EIS. Environmental impacts associated with this proposed rulemaking are evaluated in "Regulatory Analysis of Proposed Changes to NRC Regulations on Packaging and Transportation of Radioactive Material," draft dated November 1987, prepared for NRC by Pacific Northwest Laboratory, Richland, Washington.

NUREG–0170 established the non-accident related radiation exposures associated with transportation of radioactive material in the United States as 9800 person-rem which, based on the conservative linear radiation dose hypothesis, resulted in 1.7 genetic effects and 1.2 latent cancer effects per year. More than half this impact resulted from shipment of medical-use radioactive materials. Accident related impacts were established at about 1 genetic effect and 1 latent cancer fatality for 200 years of transporting radioactive materials. The principal nonradiological impacts were found to be 2 injuries per year and less than 1 accidental death per 4 years. In contrast, non-accident related radiation exposures associated with this rulemaking would be increased by 2 person-rem/y (.02 person-sieverts/y) while accident related impacts would be decreased by 4.5 person-rem/y (.045 person-sieverts/y). Nonradiological traffic injuries would be increased by 0.24 per year and by 0.012 traffic deaths per year (less than 1 accidental death per 80 years). These impacts are judged to be insignificant compared to the baseline impacts established in NUREG–0170.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the environmental assessment and finding of no significant impact are also available from Donald R. Hopkins, Radiation Protection and Health Effects Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–3784.

Paperwork Reduction Act Statement

The proposed rule would amend information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from the contact identified earlier.

The Commission requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Backfit Analysis

The factors which must be considered in a backfit analysis associated with changes in transportation regulations are evaluated in the "Regulatory Analysis of Proposed Changes to NRC Regulations on Packaging and Transportation of Radioactive Material," draft dated November 1987. That evaluation shows very small changes in accident risks as a result of the adoption of the proposed revision, but some reduction in maximum consequences given an accident. The evaluation shows broad improvement in NRC regulatory consistency with IAEA at an initial cost of $1,800,000 and a continuing annual cost of $1,700,000 per year (Table S.1).

The continuing costs are associated with the addition of a new limit on the quantity of LSA radioactive material allowed in a single transportation package. This new limit is considered internationally to be a necessary safety requirement to limit the consequences of a severe transportation accident involving LSA material.

The initial costs are chiefly associated with industry upgrading of its package safety analyses to include the proposed new accident crush and immersion tests and with the NRC review of those new analyses. The estimated costs are overstated because of the assumption that all licensees using packages approved under earlier regulatory standards would take immediate steps to upgrade the package analyses so the package approvals would reflect approval under the latest revised standards. Although that is a prudent assumption absent any reasonable basis for predicting actual licensee reaction, there is little reason licensees would take any immediate action to upgrade their package approvals. Both domestic and international regulations are based on the responsible agency's confidence that packages built to a design approved under earlier standards are adequately safe for continued use, although new package construction to that design would be limited and international use after 1992 would require approval by all countries through which the package is to be transported. In actual practice, some package approvals would never be upgraded; those that would be upgraded would be done over a period of several years as guidance and experience in upgrading becomes available.

Although the regulatory analysis shows a small reduction in accident risks from the proposed changes and some reduction in maximum consequences given an accident, the primary benefit of this rulemaking action would be to achieve consistency in radioactive material transportation regulations between the United States and the rest of the world. This consistency would not only facilitate the free movement of radioactive materials between countries for medical, research, industrial, and nuclear fuel cycle purposes, but it would also contribute to safety by concentrating the efforts of the world's experts on a single set of safety

[3] Copies of NUREG–0170 may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

standards and guidance (those of the IAEA) from which individual countries could develop their domestic regulations. In addition, the accident experience of every country that bases its domestic regulations on those of the IAEA could be applied to every other country with consistent regulations to improve its safety program.

In summary, the benefits and costs associated with this proposed rulemaking are of two categories. The first consists of changes to make U.S. regulations compatible with those of the IAEA. This effort provides major benefits including a substantial increase in the overall protection of the public health and safety, and it is associated with short-term and relatively minor costs which are justified in view of this increased protection. The second category consists of the additional limit imposed on shipments of LSA material. This effort is associated with significant ongoing costs, but internationally the new limit is considered to be a necessary safety requirement to limit the consequences of a severe transportation accident involving LSA material.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects NRC licensees, including operators of nuclear power plants, who transport or deliver to a carrier for transport relatively large quantities of radioactive material in a single package. These companies do not generally fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

List of Subjects in 10 CFR Part 71

Hazardous materials transportation, Incorporation by reference, Nuclear materials, Packaging and containers, Penalty, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is considering adoption of the following amendments to 10 CFR Part 71.

Accordingly, 10 CFR Part 71 is proposed to be revised as follows:

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

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71.1 Communications.
71.2 Interpretations.
71.3 Requirement for license.
71.4 Definitions.
71.5 Transportation of licensed material.

Subpart B—Exemptions

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Subpart C—General Licenses

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71.13 Previously approved package.
71.14 General license: DOT specification container.
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71.20 General license: Fissile material, limited moderator per package.
71.22 General license: Fissile material, limited quantity, controlled shipment.
71.24 General license: Fissile material, limited moderator, controlled shipment.

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71.61 Special requirement for irradiated nuclear fuel shipments.
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Subpart H—Quality Assurance

71.101 Quality assurance requirements.
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71.115 Control of purchased material, equipment, and services.
71.117 Identification and control of materials, parts, and components.
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71.121 Internal inspection.
71.123 Test control.
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71.127 Handling, storage, and shipping control.
71.129 Inspection, test, and operating status.
71.131 Nonconforming materials, parts, or components.
71.133 Corrective action.
71.135 Quality assurance records.
71.137 Audits.

Appendix A—Determination of A_1 and A_2

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789-790.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 71.3, 71.43, 71.45, 71.55, 71.63 (a) and (b), 71.83, 71.85, 71.87, 71.89, and 71.97 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 71.5(b), 71.91, 71.93, 71.95, and 71.101(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Subpart A—General Provisions

§ 71.0 Purpose and scope.

(a) This part establishes—

(1) Requirements for packaging, preparation for shipment, and transportation of licensed material; and

(2) Procedures and standards for NRC approval of packaging and shipping procedures for fissile material and for a quantity of other licensed material in excess of a Type A quantity.

(b) The packaging and transport of licensed material are also subject to other parts of this chapter (e.g., Parts 20, 21, 30, 40, 70, and 73) and to the regulations of other agencies (e.g., the U.S. Department of Transportation (DOT) and the U.S. Postal Service [1]) having jurisdiction over means of transport. The requirements of this part are in addition to, and not in substitution for, other requirements.

(c) The regulations in this part apply to any licensee authorized by specific license issued by the Commission to receive, possess, use, or transfer licensed material if the licensee delivers that material to a carrier for transport or transports the material outside the confines of the licensee's facility, plant, or other authorized place of use. No provision of this part authorizes possession of licensed material.

(d) Exemptions from the requirement for license in § 71.3 are specified in § 71.10. General licenses for which no NRC package approval is required are issued in §§ 71.14–71.24. The general license in § 71.12 requires that an NRC certificate of compliance or other package approval be issued for the package to be used under the general license. Application for package approval must be completed in accordance with Subpart D of this part, demonstrating that the design of the package to be used satisfies the package approval standards contained in Subpart E of this part as related to the tests of Subpart F of this part. The transport of licensed material or delivery of licensed material to a carrier for transport is subject to the operating controls and procedures requirements of Subpart G of this part, to the quality assurance requirements of Subpart H of this part, and to the general provisions of Subpart A of this part, including DOT regulations referenced in § 71.5.

§ 71.1 Communications.

All communications concerning the regulations in this part should be addressed to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be delivered in person at the Commission offices at 1717 H Street NW., Washington, DC, or its offices at 11555 Rockville Pike, Rockville, Maryland.

[1] Postal Service Manual (Domestic Mail Manual), section 124.3, which is incorporated by reference at 39 CFR 111.1 (1974).

§ 71.2 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 71.3 Requirement for license.

Except as authorized in a general license or a specific license issued by the Commission, or as exempted in this part, a licensee subject to the regulations in this part may not—

(a) Deliver any licensed material to a carrier for transport; or

(b) Transport licensed material.

§ 71.4 Definitions.

The following terms are as defined here for the purpose of this part. To ensure compatibility with international transportation standards, all limits in this part are given in terms of dual units: The International System of Units (SI) followed or preceded by U.S. standards or customary units. The U.S. customary units are not exact equivalents but are rounded to a convenient value providing a functionally equivalent unit. For the purpose of this part, either unit may be used.

"A_1" means the maximum activity of special form radioactive material permitted in a Type A package. "A_2" means the maximum activity of radioactive material, other than special form radioactive material, permitted in a Type A package. These values are either listed in Appendix A of this part, Table A–1, or may be derived in accordance with the procedure prescribed in Appendix A of this part.

"Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

"Close reflection by water" means immediate contact by water of sufficient thickness for maximum reflection of neutrons.

"Containment system" means the assembly of components of the packaging intended to retain the radioactive material during transport.

"Conveyance" means any vehicle, aircraft, vessel, or hold, compartment, or defined deck area of a vessel.

"Exclusive use" (also referred to in other regulations as "sole use" or "full load") means the sole use of a conveyance or of a large freight container with a minimum length of 6 m (19.7 ft) by a single consignor and for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. Any loading or unloading must be performed by personnel having radiological training and resources appropriate for safe handling of the consignment. Specific instructions for maintenance of exclusive use shipment controls must be issued in writing and included with the shipping paper information provided to the carrier by the consignor.

"Fissile material" means plutonium-238, plutonium-239, plutonium-241, uranium-233, uranium-235, or any combination of these radionuclides. Unirradiated natural uranium and depleted uranium, and natural uranium or depleted uranium which has been irradiated in thermal reactors only are not included in this definition. Certain exclusions from fissile material controls are provided in § 71.53.

"Low-Specific-Activity (LSA) material" means radioactive material with limited specific activity which satisfies the descriptions and limits set forth below. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material must be in one of three groups:

(1) *LSA–I.* (i) Ores containing only naturally occurring radionuclides (e.g., uranium, thorium) and uranium or thorium concentrates of such ores; or

(ii) Solid unirradiated natural uranium or depleted uranium or natural thorium or their solid or liquid compounds or mixtures; or

(iii) Radioactive material, other than fissile material, for which the A_2 value is unlimited; or

(iv) Contaminated earth in a closed transport vehicle for which the estimated average specific activity does not exceed $10^{-6}A_2/g$.

(2) *LSA–II.* (i) Water with tritium concentration up to 27.0Ci/λ (1TBq/λ); or

(ii) Material in which the radioactive material is distributed throughout and the estimated average specific activity does not exceed $10^{-4}A_2/g$ for solids and gases, and $10^{-5}A_2/g$ for liquids.

(3) *LSA–III.* Solids (e.g., consolidated wastes, activated materials) in which:

(i) The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.); and

(ii) The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of radioactive

material per package by leaching when placed in water for seven days would not exceed 0.1 A_2; and

(iii) The estimated average specific activity of the solid does not exceed $2\times10^{-3}A_2/g$.

"Maximum normal operating pressure" means the maximum gauge pressure that would develop in the containment system in a period of one year under the heat test specified in § 71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

"Natural thorium" means thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

"Normal form radioactive material" means radioactive material which has not been demonstrated to qualify as "special form radioactive material."

"Optimum interspersed hydrogenous moderation" means the presence of hydrogenous material between packages to such an extent that the maximum nuclear reactivity results.

"Package" means the packaging together with its radioactive contents as presented for transport.

(1) "Fissile material package" means a fissile material packaging together with its fissile material contents.

(2) "Type B package" means a Type B packaging together with its radioactive contents. On approval, a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kPa (102 lb/in²) gauge or a pressure relief device which would allow the release of radioactive material to the environment under the tests specified in § 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, see DOT regulations in 49 CFR Part 173. A Type B package approved prior to September 6, 1983 was designated only as Type B. Limitations on its use are specified in § 71.13.

"Packaging" means the assembly of components necessary to ensure compliance with the packaging requirements of this part. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

"Special form radioactive material" means radioactive material which satisfies the following conditions:

(1) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(2) The piece or capsule has at least one dimension not less than 5 mm (0.197 in); and

(3) It satisfies the requirements of § 71.75. A special form encapsulation designed in accordance with the requirements of § 71.4 of this part in effect on June 30, 1983, and constructed prior to July 1, 1985, and a special form encapsulation designed in accordance with the requirements of § 71.4 of this part in effect on June 30, 1989, and constructed prior to July 1, 1991 may continue to be used. Any other special form encapsulation must meet the requirements of this paragraph.

"Specific activity" of a radionuclide means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

"State" means the 50 States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

"Surface Contaminated Object (SCO)" means a solid object which is not itself radioactive having radioactive material not exceeding the following limits distributed on its surfaces. SCO must be in one of two groups:

(1) *SCO–I.* A solid object on which:

(i) The non-fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 1.08×10^{-5} μCi/cm² (4 Bq/cm²) for beta and gamma emitters, or 1.08×10^{-6} μCi/cm² (0.4 Bq/cm²) for alpha emitters;

(ii) The fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 1.08 μCi/cm² (4×10^4 Bq/cm²) for beta and gamma emitters, or 0.108 μCi/cm² (4×10^3 Bq/cm²) for alpha emitters; and

(iii) The non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 1.08 μCi/cm² (4×10^4 Bq/cm²) for beta and gamma emitters, or 0.108 μCi/cm² (4×10^3 Bq/cm²) for alpha emitters.

(2) *SCO–II.* A solid object on which the limits for SCO–I are exceeded and on which:

(i) The non-fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 1.08×10^{-2} μCi/cm² (400 Bq/cm²) for beta and gamma emitters or 1.08×10^{-3} μCi/cm² (40 Bq/cm²) for alpha emitters;

(ii) The fixed contamination on the surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 21.6 μCi/cm² (8×10^5 Bq/cm²) for beta and gamma emitters, or 2.16 μCi/cm² (8×10^4 Bq/cm²) for alpha emitters; and

(iii) The non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 21.6 μCi/cm² (8×10^5 Bq/cm²) for beta and gamma emitters, or 2.16 μCi/cm² (8×10^4 Bq/cm²) for alpha emitters.

"Transport index" means the dimensionless number (rounded up to the first decimal place) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is determined as follows:

(1) For nonfissile material packages, the number expressing the maximum radiation level in millirem per hour at 1 meter from the external surface of the package; or

(2) For fissile material packages, the number expressing the maximum radiation level in millirem per hour at 1 meter from the external surface of the package, or the number determined under § 71.59, whichever number is larger.

"Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in Table A–1 of this part or may be determined by procedures described in Appendix A of this part.

"Type B quantity" means a quantity of radioactive material greater than a Type A quantity.

"Uranium—natural, depleted, enriched."

(1) "Natural uranium" means uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder essentially uranium-238).

(2) "Depleted uranium" means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(3) "Enriched uranium" means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

§ 71.5 Transportation of licensed material.

(a) Each licensee who transports licensed material outside of the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in 49 CFR Parts 170–189 appropriate to the mode of transport.

(1) The licensee shall particularly note DOT regulations in the following areas:

(i) Packaging—49 CFR Part 173: Subparts A and B and §§ 173.401–173.478.

(ii) Marking and labeling—49 CFR Part 172: Subpart D, §§ 172.400–172.407, and §§ 172.436–172.440.

(iii) Placarding—49 CFR Part 172: §§ 172.500–172.519, 172.556, and Appendices B and C.

(iv) Accident reporting—49 CFR Part 171: §§ 171.15 and 171.16.

(v) Shipping papers—49 CFR Part 172: Subpart C.

(2) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(i) Rail—49 CFR Part 174: Subparts A–D and K.

(ii) Air—49 CFR Part 175.

(iii) Vessel—49 CFR Part 176: Subparts A–F and M.

(iv) Public Highway—49 CFR Part 177.

(b) If DOT regulations are not applicable to a shipment of licensed material by rail, highway, or water because the shipment or the transportation of the shipment is not in interstate or foreign commerce, or to a shipment of licensed material by air because the shipment is not transported in civil aircraft, the licensee shall conform to the standards and requirements of the DOT specified in paragraph (a) of this section to the same extent as if the shipment or transportation were in interstate or foreign commerce or in civil aircraft. A request for modification, waiver, or exemption from those requirements, and any notification referred to in those requirements, must be filed with or made to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Subpart B—Exemptions

§ 71.6 [Reserved]

§ 71.7 Specific exemptions.

On application of any interested person or on its own initiative, the Commission may grant any exemption from the requirements of the regulations in this part that it determines is authorized by law and will not endanger life or property or the common defense and security.

§ 71.8 [Reserved]

§ 71.9 Exemption of physicians.

Any physician licensed by a State of the United States to dispense drugs in the practice of medicine is exempt from § 71.5 with respect to transport by the physician of licensed material for use in the practice of medicine. However, any physician operating under this exemption must be licensed under 10 CFR Part 35 or the equivalent Agreement State regulations.

§ 71.10 Exemption for low-level materials.

(a) A licensee is exempt from all requirements of this part with respect to shipment or carriage of a package containing radioactive material having a specific activity not greater than 0.002 μCi/g (74 KBq/kg).

(b) A licensee is exempt from all requirements of this part, other than §§ 71.5 and 71.88, with respect to shipment or carriage of the following packages, provided the packages contain no fissile material or the fissile material exemption standards of § 71.53 are satisfied:

(1) A package containing no more than a Type A quantity of radioactive material;

(2) A package in which the only radioactive material is low-specific-activity (LSA) material or surface contaminated objects (SCO), provided the quantity of radioactive material in that package does not exceed $2A_1$.

(c) A licensee is exempt from all requirements of this part, other than §§ 71.5 and 71.88, with respect to shipment or carriage of low-specific-activity (LSA) material in group LSA–I and surface contaminated objects (SCO) in group SCO–I.

§ 71.11 [Reserved]

Subpart C—General Licenses

§ 71.12 General license: NRC-approved package.

(a) A general license is hereby issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance, or other approval has been issued by the NRC.

(b) This general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of Subpart H of this part.

(c) This general license applies only to a licensee who—

(1) Has a copy of the certificate of compliance, or other approval of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;

(2) Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of Subparts A, G, and H of this part; and

(3) Submits in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, prior to the licensee's first use of the package, the licensee's name and license number and the package identification number specified in the package approval.

(d) This general license applies only when the package approval authorizes use of the package under this general license.

(e) For a Type B or fissile material package, the design of which was approved by NRC prior to (the effective date of this regulation), the general license is subject to the additional restrictions of § 71.13.

§ 71.13 Previously approved package.

(a) A Type B package previously approved by the NRC but not designated as B(U) or B(M) in the identification number of the NRC Certificate of Compliance may be used under the general license of § 71.12 with the following additional conditions:

(1) Fabrication of the packaging was satisfactorily completed by August 31, 1986, as demonstrated by application of its model number in accordance with § 71.85(c);

(2) A package used for a shipment to a location outside the United States is subject to multilateral approval as defined in § 173.403(o) of DOT regulations in 49 CFR Part 173; and

(3) A serial number which uniquely identifies each packaging which conforms to the approved design is assigned to and legibly and durably marked on the outside of each packaging.

(b) A Type B(U) package, a Type B(M) package, or a fissile material package, previously approved by the NRC but without the designation "-85" in the identification number of the NRC Certificate of Compliance, may be used under the general license of § 71.12 with the following additional conditions:

(1) Fabrication of the package is satisfactorily completed by December 31, 1985, as demonstrated by application of its model number in accordance with § 71.85(c);

(2) A package used for a shipment to a location outside the United States after

December 31, 1992, is subject to multilateral approval as defined in § 713.403(o) of DOT regulations in 49 CFR Part 173; and

(3) After December 31, 1990, a serial number which uniquely identifies each packaging which conforms to the approved design is assigned to and legibly and durably marked on the outside of each packaging.

(c) The NRC will approve modifications to the design and authorized contents of a Type B package, or a fissile material package, previously approved by the NRC provided—

(1) The modifications are not significant with respect to the design, operating characteristics, or safe performance of the containment system when the package is subjected to the tests specified in §§ 71.71 and 71.73; and

(2) The modification to the package satisfies the requirements of this part.

(d) The NRC will revise the package identification number to designate previously approved package designs as B(U) or B(M), as appropriate, and with the identification number suffix "-85" after receipt of an application demonstrating that the design meets the requirements of this part.

§ 71.14 General license: DOT specification container.

(a) A general license is issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material or for a Type B quantity of radioactive material as specified in the regulations of DOT in 49 CFR Parts 173 and 178.

(b) This general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of Subpart H of this part.

(c) This general license applies only to a licensee who—

(1) Has a copy of the specification; and

(2) Complies with the terms and conditions of the specification and the applicable requirements of Subparts A, G, and H of this part.

(d) This general license is subject to the limitation that the specification container may not be used for a shipment to a location outside the United States after August 31, 1986, except by multilateral approval as defined in § 173.403(o) of DOT regulations in 49 CFR Part 173.

§ 71.16 General License: Use of foreign approved package.

(a) A general license is issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate which has been revalidated by DOT as meeting the applicable requirements of 49 CFR 171.12.

(b) Except as otherwise provided in this section, the general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the applicable provisions of Subpart H of this part.

(c) This general license applies only to shipments made to or from locations outside the United States.

(d) This general license applies only to a licensee who—

(1) Has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment; and

(2) Complies with the terms and conditions of the certificate and revalidation and with the applicable requirements of Subparts A, G, and H of this part. With respect to the quality assurance provisions of Subpart H of this part, the license is exempt from design, construction, and fabrication considerations.

§ 71.18 General license: Fissile material, limited quantity per package.

(a) A general license is issued to any licensee of the Commission to transport fissile material, or to deliver fissile material to a carrier for transport, without complying with the package standards of Subparts E and F of this part if the material is shipped in accordance with this section.

(b) The general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of Subpart H of this part.

(c) This general license applies only when a package contains no more than a Type A quantity of radioactive material, including only one of the following:

(1) Up to 40 g of uranium-235;

(2) Up to 30 g of uranium-233;

(3) Up to 25 g of the fissile radionuclides of plutonium, except that for encapsulated plutonium-beryllium neutron sources in special form, an A_1 quantity of plutonium may be present; or

(4) A combination of fissile radionuclides in which the sum of the ratios of the amount of each radionuclide to the corresponding maximum amounts in paragraphs (c) (1), (2), and (3) of this section does not exceed unity.

(d) This general license applies only when, except as specified below for encapsulated plutonium-beryllium sources, a package containing more than 15 g of fissile radionuclides is labeled with a transport index not less than the number given by the following equation, where the package contains x g of uranium-235, y g of uranium-233, and z g of the fissile radionuclides of plutonium:

$$\text{Minimum Transport Index} = (0.40x + 0.67y + z)\left(1 - \frac{15}{x+y+z}\right).$$

For a package in which the only fissile material is in the form of encapsulated plutonium-beryllium neutron sources in special form, the transport index based on criticality considerations may be taken as 0.026 times the number of grams of the fissile radionuclides of plutonium in excess of 15 g. In all cases, the transport index must be rounded up to one decimal place and may not exceed 10.0.

§ 71.20 General license: Fissile material, limited moderator per package.

(a) A general license is issued to any licensee of the Commission to transport fissile material, or to deliver fissile material to a carrier for transport, without complying with the package standards of Subparts E and F of this part if the material is shipped in accordance with this section.

(b) The general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of Subpart H of this part.

(c) This general license applies only when—

(1) The package contains no more than a Type A quantity of radioactive material;

(2) Neither beryllium nor hydrogenous material enriched in deuterium is present;

(3) The total mass of graphite present does not exceed 150 times the total mass of uranium-235 plus plutonium;

(4) Substances having a higher hydrogen density than water, e.g., certain hydrocarbon oils, are not present, except that polyethelene may be used for packing or wrapping;

(5) Uranium-233 is not present, and the amount of plutonium does not exceed 1 percent of the amount of uranium-235;

(6) The amount of uranium-235 is limited as follows:

(i) If the fissile radionuclides are not uniformly distributed, the maximum amount of uranium-235 per package may not exceed the value given in Table I of this part; or

(ii) If the fissile radionuclides are distributed uniformly (i.e., cannot form a lattice arrangement within the packaging), the maximum amount of uranium-235 per package may not exceed the value given in Table II of this part; and

(7) The transport index of each package based on criticality considerations is taken as 10 times the number of grams of uranium-235 in the package divided by the maximum allowable number of grams per package in accordance with Table I or Table II of this part, as applicable.

TABLE I.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL PACKAGE APPLICABLE TO § 71.20(c)(6)(i)

[Nonuniform Distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per package
24	40
20	42
15	45
11	48
10	51
9.5	52
9	54
8.5	55
8	57
7.5	59
7	60
6.5	62
6	65
5.5	68
5	72
4.5	76
4	80
3.5	88
3	100
2.5	120
2	164
1.5	272
1.35	320

TABLE I.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL PACKAGE APPLICABLE TO § 71.20(c)(6)(i)—Continued

[Nonuniform Distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per package
1	680
0.92	1,200

TABLE II.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL PACKAGE APPLICABLE TO § 71.20(c)(6)(ii)

[Uniform Distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per package
4	84
3.5	92
3	112
2.5	148
2	240
1.5	560
1.35	800

§ 71.22 General license: Fissile material, limited quantity, controlled shipment.

(a) A general license is issued to any licensee of the Commission to transport fissile material, or to deliver fissile material to a carrier for transport, without complying with the package standards of Subparts E and F of this part if limited material is shipped in accordance with this section.

(b) The general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of Subpart H of this part.

(c) This general license applies only when a package contains no more than a Type A quantity of radioactive material and no more than 400 g total of the fissile radionuclides of plutonium encapsulated as plutonium-beryllium neutron sources in special form.

(d) This general license applies only when the fissile radionuclides in the shipment exceed none of the following:

(1) 500 g of uranium-235;

(2) 300 g total of uranium-233, and the fissile radionuclides of plutonium;

(3) A total quantity of uranium-233, uranium-235, and the fissile radionuclides of plutonium so that the sum of the ratios of the quantity of each radionuclide to the quantity specified in paragraphs (d)(1) and (d)(2) of this section exceeds unity; or

(4) 2,500 g total of the fissile radionuclides of plutonium encapsulated as plutonium-beryllium neutron sources in special form.

(e) This general license applies only when shipment of these packages is made under procedures specifically authorized by DOT in accordance with 49 CFR Part 173 of its regulations to prevent loading, transport, or storage of these packages with other fissile material shipments.

§ 71.24 General license: Fissile material, limited moderator, controlled shipment.

(a) A general license is issued to any licensee of the Commission to transport fissile material, or to deliver fissile material to a carrier for transport, without complying with the package standards of Subparts E and F of this part, if limited material is shipped in accordance with this section.

(b) The general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of Subpart H of this part.

(c) This general license applies only when—

(1) No package contains more than a Type A quantity of radioactive material;

(2) The packaging does not incorporate lead shielding exceeding 5 cm in thickness, tungsten shielding, or uranium shielding;

(3) Neither beryllium nor hydrogenous material enriched in deuterium is present;

(4) The total mass of graphite present does not exceed 150 times the total mass of uranium-235 and plutonium;

(5) Substances having a higher hydrogen density than water, e.g., certain hydrocarbon oils, are not present, except that polyethylene may be used for packing or wrapping;

(6) For fissile contents containing no uranium-233 and less than 1 percent total plutonium if the fissile radionuclides are—

(i) Not uniformly distributed, the maximum amount of uranium-235 per consignment does not exceed the value given in Table III of this part; or

(ii) Distributed uniformly and cannot form a lattice arrangement within the packaging, the maximum amount of uranium-235 per shipment does not exceed the value given in Table IV of this part;

(7) For fissile contents containing uranium-233 or more than 1 percent plutonium, the total mass of fissile material per shipment is limited so that the sum of the number of grams of

uranium-235 divided by 400, the number of grams of plutonium divided by 225, and the number of grams of uranium-233 divided by 250 does not exceed unity as expressed in the formula

$$\frac{\text{grams uranium-235}}{400\ \text{g}} + \frac{\text{grams plutonium}}{225\ \text{g}} + \frac{\text{grams uranium-233}}{250\ \text{g}} < 1;$$

(8) The transport must be direct to the consignee without any intermediate transit storage; and

(9) Shipment of these packages is made under procedures specifically authorized by DOT in accordance with 49 CFR Part 173 of its regulations to prevent loading, transport, or storage of these packages with other fissile material shipments.

TABLE III.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL SHIPMENT APPLICABLE TO § 71.24(c)(6)(i)

[Nonuniform distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per consignment
20	520
15	560
11	600
10	640
9.5	655
9	675
8.5	690
8	710
7.5	730
7	750
6.5	780
6	810
5.5	850
5	900
4.5	950
4	1,000
3.5	1,100
3	1,250
2.5	1,500
2	2,050
1.5	3,400
1.35	4,000
1	8,500
0.92	15,000

TABLE IV.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL SHIPMENT APPLICABLE TO § 71.24(c)(6)(ii)

[Uniform distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per consignment
4	1,050
3.5	1,150

TABLE IV.—PERMISSIBLE MASS OF URANIUM-235 PER FISSILE MATERIAL SHIPMENT APPLICABLE TO § 71.24(c)(6)(ii)—Continued

[Uniform distribution]

Uranium enrichment in weight percent of uranium-235 not exceeding	Permissible maximum grams of uranium-235 per consignment
3	1,400
2.5	1,800
2	3,000
1.5	7,000
1.35	10,000

Subpart D—Application for Package Approval

§ 71.31 Contents of application.

(a) An application for an approval under this part must include, for each proposed packaging design, the following information.

(1) A package description as required by § 71.33;

(2) A package evaluation as required by § 71.35; and

(3) A quality assurance program description as required by § 71.37 or a reference to a previously approved quality assurance program.

(b) Except as provided in § 71.13, an application for modification of a package design, whether for modification of the packaging or authorized contents, must include sufficient information to demonstrate that the proposed design satisfies the package standards in effect at the time the application is filed.

(c) The applicant shall identify any established codes and standards proposed for use in package design, fabrication, assembly, testing, maintenance, and use. In the absence of any codes and standards, the applicant shall describe and justify the basis and rationale used to formulate the package quality assurance program.

§ 71.33 Package description.

The application must include a description of the proposed package in sufficient detail to identify the package accurately and provide a sufficient basis for evaluation of the package. The description must include—

(a) With respect to the packaging—

(1) Classification as Type B(U), Type B(M), or fissile material packaging;

(2) Gross weight;

(3) Model number;

(4) Identification of the containment system;

(5) Specific materials of construction, weights, dimensions, and fabrication methods of—

(i) Receptacles;

(ii) Materials specifically used as nonfissile neutron absorbers or moderators;

(iii) Internal and external structures supporting or protecting receptacles;

(iv) Valves, sampling ports, lifting devices, and tie-down devices; and

(v) Structural and mechanical means for the transfer and dissipation of heat; and

(6) Identification and volumes of any receptacles containing coolant.

(b) With respect to the contents of the package—

(1) Identification and maximum radioactivity of radioactive constituents;

(2) Identification and maximum quantities of fissile constituents;

(3) Chemical and physical form;

(4) Extent of reflection, the amount and identity of nonfissile materials used as neutron absorbers or moderators, and the atomic ratio of moderator to fissile constituents;

(5) Maximum normal operating pressure;

(6) Maximum weight;

(7) Maximum amount of decay heat; and

(8) Identification and volumes of any coolants.

§ 71.35 Package evaluation.

The application must include the following:

(a) A demonstration that the package satisfies the standards specified in Subparts E and F of this part;

(b) For a fissile material package, the allowable number of packages which may be transported in the same vehicle in accordance with § 71.59; and

(c) For a fissile material shipment any proposed special controls and

precautions for transport, loading, unloading, and handling and any proposed special controls in the event of an accident or delay.

§ 71.37 Quality assurance.

(a) The applicant shall describe the quality assurance program (see Subpart H of this part) for the design, fabrication, assembly, testing, maintenance, repair, modification, and use of the proposed package.

(b) The applicant shall identify any specific provisions of the quality assurance program which are applicable to the particular package design under consideration, including a description of the leak testing procedures.

§ 71.38 Renewal of a certificate of compliance or quality assurance program approval.

(a) Except as provided in paragraph (b) of this section, each Certificate of Compliance or Quality Assurance Program Approval expires at the end of the day, in the month and year stated in the approval.

(b) In any case in which a person, not less than 30 days prior to the expiration of an existing Certificate of Compliance or Quality Assurance Program Approval issued pursuant to the part, has filed an application in proper form for renewal of either of those approvals, the existing Certificate of Compliance or Quality Assurance Program Approval for which the renewal application was filed shall not expire until final action on the application for renewal has been taken by the Commission.

(c) In applying for renewal of an existing Certificate of Compliance or Quality Assurance Program Approval, an applicant must submit a consolidated application which incorporates all changes to its program that are incorporated by reference in the existing approval certificate into as few referenceable documents as reasonably achievable.

§ 71.39 Requirement for additional information.

The Commission may at any time require additional information in order to enable it to determine whether a license, certificate of compliance, or other approval should be granted, renewed, denied, modified, suspended, or revoked.

Subpart E—Package Approval Standards

§ 71.41 Demonstration of compliance.

(a) The effects on a package of the tests specified in § 71.71 (Normal Conditions of Transport) and the tests specified in § 71.73 (Hypothetical Accident Conditions) and § 71.61 (deep immersion test) must be evaluated by subjecting a specimen or scale model to a specific test, or by another method of demonstration acceptable to the Commission, as appropriate for the particular feature being considered.

(b) Taking into account the type of vehicle, the method of securing or attaching the package, and the controls to be exercised by the shipper, the Commission may permit the shipment to be evaluated together with the transporting vehicle.

(c) Environmental and test conditions different from those specified in §§ 71.71 and 71.73 may be approved by the Commission if the controls proposed to be exercised by the shipper are demonstrated to be adequate to provide equivalent safety of the shipment.

§ 71.43 General standards for all packages.

(a) The smallest overall dimension of a package must not be less than 10 cm (3.94 in).

(b) The outside of a package must incorporate a feature, such as a seal, that is not readily breakable and that, while intact, would be evidence that the package has not been opened by unauthorized persons.

(c) Each package must include a containment system securely closed by a positive fastening device that cannot be opened unintentionally or by a pressure that may arise within the package.

(d) A package must be of materials and construction that assure that there will be no significant chemical, galvanic, or other reaction among the packaging components, among package contents, or between the packaging components and the package contents, including possible reaction resulting from inleakage of water to the maximum credible extent. Account must be taken of the behavior of materials under irradiation.

(e) A package valve or other device, the failure of which would allow radioactive contents to escape, must be protected against unauthorized operation and, except for a pressure relief device, must be provided with an enclosure to retain any leakage.

(f) A package must be designed, constructed, and prepared for shipment so that under the tests specified in § 71.71 (Normal Conditions of Transport) there would be no loss or dispersal of radioactive contents, no significant increase in external surface radiation levels, and no substantial reduction in the effectiveness of the packaging.

(g) A package must be designed, constructed, and prepared for transport so that in still air at 38 °C (100 °F) and in the shade, no accessible surface of a package would have a temperature exceeding 50 °C (122 °F) in a nonexclusive use shipment or 85 °C (185 °F) in an exclusive use shipment.

(h) A package must not incorporate a feature intended to allow continuous venting during transport.

§ 71.45 Lifting and tie-down standards for all packages.

(a) Any lifting attachment that is a structural part of a package must be designed with a minimum safety factor of three against yielding when used to lift the package in the intended manner, and it must be designed so that failure of any lifting device under excessive load would not impair the ability of the package to meet other requirements of this subpart. Any other structural part of the package which could be used to lift the package must be capable of being rendered inoperable for lifting the package during transport or must be designed with strength equivalent to that required for lifting attachments.

(b) Tie-down devices:

(1) If there is a system of tie-down devices which is a structural part of the package, the system must be capable of withstanding, without generating stress in any material of the package in excess of its yield strength, a static force applied to the center of gravity of the package having a vertical component of 2 times the weight of the package with its contents, a horizontal component along the direction in which the vehicle travels of 10 times the weight of the package with its contents, and a horizontal component in the transverse direction of 5 times the weight of the package with its contents.

(2) Any other structural part of the package that could be used to tie down the package must be capable of being rendered inoperable for tying down the package during transport, or must be designed with strength equivalent to that required for tie-down devices.

(3) Each tie-down device which is a structural part of a package must be designed so that failure of the device under excessive load would not impair the ability of the package to meet other requirements of this part.

§ 71.47 External radiation standards for all packages.

A package must be designed and prepared for shipment so that the radiation level does not exceed 200 mrem/h (2 mSv/h) at any point on the accessible external surface of the

package and the transport index defined in § 71.4 does not exceed 10. For a package transported as exclusive use by rail, highway, or water, radiation levels external to the package may exceed these limits, but must not exceed any of the following limits:

(a) Radiation levels on the accessible external surface of the package must not exceed 200 mrem/h (2 mSv/h) unless the following conditions are met, in which case the limit is 1000 mrem/h (10 mSv/h):

(1) The shipment is made in a closed transport vehicle;

(2) Provisions are made to secure the package so that its position within the vehicle remains fixed during transportation; and

(3) There are no loading or unloading operations between the beginning and end of the transportation;

(b) Radiation levels at any point on the outer surface of the vehicle must not exceed 200 mrem/h (2 mSv/h), including the upper and lower surfaces, or, in the case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load (or enclosure if used), and on the lower external surface of the vehicle;

(c) Radiation levels at any point 2 m from the outer lateral surfaces of the vehicle (excluding the top and underside of the vehicle), or, in the case of a flat-bed style vehicle, at any point 2 m from the vertical planes projected by the outer edges of the vehicle (excluding the top and underside of the vehicle) must not exceed 10 mrem/h (0.1 mSv/h); and

(d) Radiation levels in any normally occupied positions of the vehicle must not exceed 2 mrem/h (.02 mSv/h), except that this provision does not apply to private carriers when persons occupying these positions are provided with special health supervision, personnel radiation exposure monitoring devices, and training in accordance with § 19.12 of this chapter.

§ 71.51 Additional requirements for Type B packages.

(a) Except as provided in § 71.52, a Type B package, in addition to satisfying the requirements of §§ 71.41–71.47, must be designed, constructed, and prepared for shipment so that under the tests specified in—

(1) Section 71.71 (Normal Conditions of Transport), there would be no loss or dispersal of radioactive contents, as demonstrated to a sensitivity of 10^{-6} A_2 per hour, no significant increase in external surface radiation levels, and no substantial reduction in the effectiveness of the packaging; and

(2) Section 71.73 (Hypothetical Accident Conditions), there would be no escape of krypton-85 exceeding $10A_2$ in one week, no escape of other radioactive material exceeding a total amount A_2 in one week, and no external radiation dose rate exceeding 1 rem/h (10 mSv/h) at 1 m from the external surface of the package.

(b) Compliance with the permitted activity release limits of paragraph (a) of this section must not depend upon filters or upon a mechanical cooling system.

§ 71.52 Exemption for low-specific-activity (LSA) packages.

(a) A package need not satisfy the requirement of § 71.51(a)(1) which limits the loss or dispersal of radioactive contents if it contains only low-specific-activity material and is transported as exclusive use, but is subject to §§ 71.43–71.47 of this part, including § 71.43(f).

(b) A package need not satisfy the requirements of § 71.51 if it contains only low-specific-activity material and is transported as exclusive use, but is subject to §§ 71.41 through 71.47 of this part, including § 71.43(f). This paragraph (b) expires on (*one year after effective date*).

§ 71.53 Fissile material exemptions.

The following packages are exempt from fissile material classification and from the fissile material standards of § 71.55 and § 71.59, but are subject to all other requirements of this part:

(a) A package containing not more than 15 g of fissile material. If material is transported in bulk, the quantity limitation applies to the conveyance;

(b) A package containing homogeneous hydrogenous solutions or mixtures where:

(1) The minimum ratio of the number of hydrogen atoms to the number of atoms of fissile radionuclides (H/X) is 5,200;

(2) The maximum concentration of fissile radionuclides is 5 g/1; and

(3) The maximum mass of fissile radionuclides in the package is 800 g, except for a mixture where the total mass of plutonium and uranium-233 exceeds 1 percent of the mass of uranium-235, the limit is 500 g. If the material is transported in bulk, other than by aircraft, the quantity limitations apply to the conveyance;

(c) A package containing uranium enriched in uranium-235 to a maximum of 1 percent by weight, and with a total plutonium and uranium-233 content of up to 1 percent of the mass of uranium-235, if the fissile radionuclides are distributed homogeneously throughout the package contents and do not form a lattice arrangement within the package;

(d) A package containing any fissile material if it does not contain more than 5 g of fissile radionuclides in any 10 l volume, and if the material is packaged so as to maintain this limit of fissile radionuclide concentration during normal transport;

(e) A package containing not more than 1 kg of plutonium of which not more than 20 percent by mass may consist of plutonium-239, plutonium-241, or any combination of those radionuclides; or

(f) A package containing liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2 percent by weight, with total plutonium and uranium-233 not more than 0.1 percent of the mass of uranium-235 and with a minimum nitrogen-to-uranium atomic ratio (N/U) of 2.

§ 71.55 General requirements for fissile material packages.

(a) A package used for the shipment of fissile material must be designed and constructed in accordance with §§ 71.41–71.47. When required by the total amount of radioactive material, a package used for the shipment of fissile material must also be designed and constructed in accordance with § 71.51.

(b) Except as provided in paragraph (c) of this section, a package used for the shipment of fissile material must be so designed and constructed and its contents so limited that it would be subcritical if water were to leak into the containment system or liquid contents were to leak out of the containment system so that, under the following conditions, maximum reactivity of the fissile material would be attained:

(1) The most reactive credible configuration consistent with the chemical and physical form of the material;

(2) Moderation by water to the most reactive credible extent; and

(3) Close full reflection of the containment system by water on all sides.

(c) The Commission may approve exceptions to the requirements of paragraph (b) of this section if the package incorporates special design features that ensure that no single packaging error would permit leakage, and if appropriate measures are taken before each shipment to ensure that the containment system does not leak.

(d) A package used for the shipment of fissile material must be so designed and constructed and its contents so limited that under the tests specified in § 71.71 (Normal Conditions of Transport)—

(1) The contents would be subcritical

(2) The geometric form of the package contents would not be substantially altered;

(3) There would be no leakage of water into the containment system unless, in the evaluation of undamaged packages under § 71.59(b)(1), it has been assumed that moderation is present to such an extent as to cause maximum reactivity consistent with the chemical and physical form of the material; and

(4) There will be no substantial reduction in the effectiveness of the packaging, including:

(i) No more than 5 percent reduction in the total effective volume of the packaging on which nuclear safety is assessed;

(ii) No more than 5 percent reduction in the effective spacing between the fissile contents and the outer surface of the packaging; and

(iii) No occurrence of an aperture in the outer surface of the packaging large enough to permit the entry of a 10 cm (4 in) cube.

(e) A package used for the shipment of fissile material must be so designed and constructed and its contents so limited that under the tests specified in § 71.73 (Hypothetical Accident Conditions), the package would be subcritical. For this determination, it must be assumed that:

(1) The fissile material is in the most reactive credible configuration consistent with the damaged condition of the package and the chemical and physical form of the contents;

(2) Water moderation occurs to the most reactive credible extent consistent with the damaged condition of the package and the chemical and physical form of the contents; and

(3) There is reflection by water on all sides, as close as is consistent with the damaged condition of the package.

§ 71.59 Standards for arrays of fissile material packages.

(a) A fissile material package must be controlled by either the shipper or the carrier during transport to assure that an array of such packages remains subcritical. To enable this control, the designer of a fissile material package shall derive a number "N" based on all the following conditions being satisfied, assuming packages are stacked together in any arrangement and with close reflection on all sides by water:

(1) Five times "N" undamaged packages with nothing between the packages would be subcritical;

(2) Two times "N" damaged packages, if each package were subjected to the tests specified in § 71.73 (Hypothetical Accident Conditions) would be subcritical with optimum interspersed hydrogenous moderation; and

(3) The value of "N" cannot be less than 0.5.

(b) The transport index based on nuclear criticality control shall be obtained by dividing the number 50 by the value of "N" derived using the procedures specified in paragraph (a) of this section. The value of the transport index for nuclear criticality control may be zero provided that an unlimited number of packages is subcritical such that the value of "N" is effectively equal to infinity under the procedures specified in paragraph (a) of this section. Any transport index greater than zero must be rounded up to the first decimal place.

(c) Where a fissile material package is assigned a nuclear criticality control transport index—

(1) Not in excess of 10, that package may be shipped by any carrier, and that carrier provides adequate criticality control by limiting the sum of the transport indexes to 50 in a non-exclusive use vehicle and to 100 in an exclusive use vehicle.

(2) In excess of 10, that package may only be shipped by exclusive use vehicle or other shipper controlled system specified by DOT for fissile material packages. The shipper provides adequate criticality control by limiting the sum of the transport indexes to 100 in an exclusive use vehicle.

§ 71.61 Special requirement for irradiated nuclear fuel shipments.

A package for irradiated nuclear fuel with activity greater than 10^6 Ci (37 PBq) must be so designed that if it were immersed under a head of water of at least 200 m, there would be no rupture of the containment system. For demonstration purposes, an external gauge pressure of at least 2 MPa (290 psi) is considered to meet these conditions.

§ 71.63 Special requirements for plutonium and other high toxicity radionuclide shipments.

(a) Radioactive materials with an A_2 value of 0.01 Ci (0.37 GBq) or less being shipped in a quantity in excess of 20 Ci (0.74 TBq) per package must be shipped as a solid.

(b) Radioactive materials with an A_2 value of 0.01 Ci (0.37 GBq) or less being shipped in a quantity in excess of 20 Ci (0.74 TBq) per package must be packaged in a separate inner container placed within outer packaging that meets the requirements of Subparts E and F for packaging of material in normal form. If the entire package is subjected to the tests specified in § 71.71 (Normal Conditions of Transport), the separate inner container must not release its contents as demonstrated to a sensitivity of 10^{-6} A_2/h. If the entire package is subjected to the tests specified in § 71.73 (Hypothetical Accident Conditions), the separate inner container must restrict the loss of its contents to not more than A_2 in one week. Solid radioactive materials in the following forms are exempt from the requirements of this paragraph:

(1) Reactor fuel elements;

(2) Metal or metal alloy; and

(3) Other radioactive material bearing solids that the Commission determines should be exempt from the requirements of this section.

§ 71.64 Special requirements for plutonium air shipments.

(a) A package for the shipment of plutonium by air subject to § 71.88(a)(4), in addition to satisfying the requirements of §§ 71.41–71.63, as applicable, must be designed, constructed, and prepared for shipment so that under the tests specified in—

(1) Section 71.74 (Plutonium accident conditions)—

(i) The containment vessel would not be ruptured in its post-tested condition and the package must provide a sufficient degree of containment to restrict accumulated loss of plutonium contents to not more than an A_2 quantity in a period of 1 week;

(ii) The external radiation level would not exceed 1 rem/h at a distance of 2.95 ft (0.9 m) from the surface of the package in its posttested condition in air; and

(iii) A single package and an array of packages is demonstrated to be subcritical in accordance with this part, except that the damaged condition of the package must be considered to be that which results from the plutonium accident tests in § 71.74 rather than the hypothetical accident tests in § 71.73; and

(2) Paragraph 71.74(c), there would be no detectable leakage of water into the containment vessel of the package.

(b) With respect to the package requirements of paragraph (a), there must be a demonstration or analytical assessment showing that—

(1) The results of the physical testing for package qualification would not be adversely affected to a significant extent by—

(i) The presence, during the tests, of the actual contents that will be transported in the package, and

(ii) Ambient water temperatures ranging from 0.6 °C (+33 °F) to 38 °C (+100 °F) for those qualification tests involving water, and ambient atmospheric temperatures ranging from

−40 °C (−40 °F) to +54 °C (+130 °F) for the other qualification tests.

(2) The ability of the package to meet the acceptance standards prescribed for the accident condition sequential tests would not be adversely affected if one or more tests in the sequence were deleted.

§ 71.65 Additional requirements.

The Commission may, by rule, regulation, or order, impose requirements upon any licensee in addition to those established in this part as it deems necessary or appropriate to prctect public health or to minimize danger to life or property.

Subpart F—Package and Special Form Tests [2]

§ 71.71 Normal conditions of transport.

(a) *Evaluation.* Evaluation of each package design under normal conditions of transport must include a determination of the effect on that design of the conditions and tests specified in this section. Separate specimens may be used for the free drop test, the compression test, and the penetration test if each specimen is subjected to the water spray test before being subjected to any of the other tests.

(b) *Initial conditions.* With respect to the initial conditions for the tests in this section, the demonstration of compliance with the requirements of this part must be based on the ambient temperature preceding and following the tests remaining constant at that value between −29 °C (−20 °F) and +38 °C (100 °F) which is most unfavorable for the feature under consideration. The initial internal pressure within the containment system must be considered to be the maximum normal operating pressure, unless a lower internal pressure consistent with the ambient temperature considered to precede and follow the tests is more unfavorable.

(c) *Conditions and tests*—(1) *Heat.* An ambient temperature of 38 °C (100 °F) in still air, and insolation according to the following table:

INSOLATION DATA

Form and location of surface	Total insolation for a 12-hour period (g cal/cm²)
Flat surfaces transported horizontally:	
Base	None
Other surfaces	800
Flat surfaces not transported horizontally	200
Curved surfaces	400

[2] The package standards related to the tests in this subpart are contained in Subpart E.

(2) *Cold.* An ambient temperature of −40 °C (−40 °F) in still air and shade.

(3) *Reduced external pressure.* An external pressure of 25 kPa (3.63 lb/in²) absolute.

(4) *Increased external pressure.* An external pressure of 140 kPa (20.3 lb/in²) absolute.

(5) *Vibration.* Vibration normally incident to transport.

(6) *Water spray.* A water spray that simulates exposure to rainfall of approximately 5 cm/h (1.97 in/h) for at least one hour.

(7) *Free drop.* Between 1.5 and 2.5 hours after the conclusion of the water spray test, a free drop through the distance specified below onto a flat, essentially unyielding, horizontal surface, striking the surface in a position for which maximum damage is expected. For fissile material packages, this free drop must be preceded by a free drop from a height of 0.3 m (0.984 ft) on each corner or, in the case of a cylindrical fissile material package, onto each of the quarters of each rim.

CRITERIA FOR FREE DROP TEST (WEIGHT/DISTANCE)

Package weight		Free drop distance	
Kilograms	(Pounds)	Meters	(Feet)
Less than 5,000	(Less than 11,000).	1.2	(3.94)
5,000 to 10,000	(11,000 to 22,000).	.9	(2.95)
10,000 to 15,000.	(22,000 to 33,100).	.6	(1.97)
More than 15,000.	(More than 33,100).	.3	(.984)

(8) *Corner drop.* A free drop onto each corner of the package in succession, or in the case of a cylindrical package onto each quarter of each rim, from a height of 0.3 m (0.984 ft) onto a flat, essentially unyielding, horizontal surface. This test applies only to fiberboard or wood rectangular packages not exceeding 50 kg (110 lbs) and fiberboard or wood cylindrical packages not exceeding 100 kg (220 lbs).

(9) *Compression.* For packages weighing up to 5,000 kg (11,000 lbs), the package must be subjected, for a period of 24 hours, to a compressive load applied uniformly to the top and bottom of the package in the position in which the package would normally be transported. The compressive load must be the greater of the following:

(i) The equivalent of five times the weight of the package; or

(ii) The equivalent of 13 kPa (1.89 lb/in²) multiplied by the vertically projected area of the package.

(10) *Penetration.* Impact of the hemispherical end of a vertical steel cylinder of 3.2 cm (1.26 in) diameter and 6 kg (13.2 lbs) mass, dropped from a height of 1 m (3.28 ft) onto the exposed surface of the package which is expected to be most vulnerable to puncture. The long axis of the cylinder must be perpendicular to the package surface.

§ 71.73 Hypothetical accident conditions.

(a) *Test procedures.* Evaluation for hypothetical accident conditions is to be based on sequential application of the tests specified in this section, in the order indicated, to determine their cumulative effect on a package or array of packages. An undamaged specimen may be used for the water immersion tests specified in paragraphs (c) (5) and (6) of this section.

(b) *Test conditions.* With respect to the initial conditions for the tests, except for the water immersion tests, to demonstrate compliance with the requirements of this part during testing, the ambient air temperature before and after the tests must remain constant at that value between −29 °C (−20 °F) and +38 °C (100 °F) which is most unfavorable for the feature under consideration. The initial internal pressure within the containment system must be the maximum normal operating pressure unless a lower internal pressure consistent with the ambient temperature assumed to precede and follow the tests is more unfavorable.

(c) *Tests.* Tests for hypothetical accident conditions must be conducted as follows:

(1) *Free Drop.* A free drop of the specimen through a distance of 9 m (29.5 ft) onto a flat, essentially unyielding, horizontal surface, striking the surface in a position for which maximum damage is expected

(2) *Crush.* Subjection of the specimen to a dynamic crush test by positioning the specimen on a flat, essentially unyielding, horizontal surface so as to suffer maximum damage by the drop of a 500 kg (1,100 pounds) mass from 9 m (29.5 ft) onto the specimen. The mass must consist of a solid mild steel plate 1

m (3.28 ft) by 1 m and must fall in a horizontal attitude. The crush test is required only when the specimen has a mass not greater than 500 kg (1,100 lbs), an overall density not greater than 1,000 kg/m³ (62.4 lbs/ft³) based on external dimensions, and radioactive contents greater than 1,000 A_2 not as special form radioactive material.

(3) *Puncture.* A free drop of the specimen through a distance of 1 m (39.4 in) in a position for which maximum damage is expected, onto the upper end of a solid, vertical, cylindrical, mild steel bar mounted on an essentially unyielding, horizontal surface. The bar must be 15 cm (5.91 in) in diameter, with the top horizontal and its edge rounded to a radius of not more than 6 mm (0.236 in) and of a length as to cause maximum damage to the package, but not less than 20 cm (7.87 in) long. The long axis of the bar must be vertical.

(4) *Thermal.* Exposure of the specimen fully engulfed, except for a single support system, in a hydrocarbon fuel/air fire of sufficient extent and in sufficiently quiescent ambient conditions to provide an average emissivity coefficient of at least 0.9, with an average flame temperature of at least 800 °C (1,472 °F) for a period of 30 minutes, or any other thermal test which provides the equivalent total heat input to the package and which provides a time averaged environmental temperature of 800 °C. The fuel source shall extend horizontally at least 1 m (3.28 ft), but shall not extend more than 3 m (9.84 ft), beyond any external surface of the specimen, and the specimen shall be positioned 1 m (3.28 ft) above the surface of the fuel source. For purposes of calculation, the surface absorptivity coefficient must be either that value which the package may be expected to possess if exposed to the fire specified or 0.8, whichever is greater; and the convective coefficient must be that value which may be demonstrated to exist if the package were exposed to the fire specified. Artificial cooling must not be applied after cessation of external heat input and any combustion of materials of construction must be allowed to proceed until it terminates naturally.

(5) *Immersion—all packages.* A separate, undamaged specimen must be subjected to water pressure equivalent to immersion under a head of water of at least 15 m (50 ft). For test purposes, an external pressure of water of 150 kPa (21.7 lb/in²) gauge is considered to meet these conditions.

(6) *Immersion—fissile material.* For fissile material subject to § 71.55, in those cases where water inleakage has not been assumed for criticality analysis, immersion under a head of water of at least 0.9 m (3 ft) in the attitude for which maximum leakage is expected.

§ 71.74 Plutonium accident conditions.

(a) *Test conditions—Sequence of tests.* A package must be physically tested to the following conditions in the order indicated to determine their cumulative effect.

(1) Impact at a velocity of not less than 129 m/sec (423 ft/sec) at a right angle onto a flat, essentially unyielding, horizontal surface, in the orientation (e.g., side, end, corner) expected to result in maximum damage at the conclusion of the test sequence.

(2) A static compressive load of 31,800 kg (70,100 lbs) applied in the orientation expected to result in maximum damage at the conclusion of the test sequence. The force on the package must be developed between a flat steel surface and a 5 cm (1.97 in) wide, straight, solid, steel bar. The length of the bar must be at least as long as the diameter of the package and the longitudinal axis of the bar must be parallel to the plane of the flat surface. The load must be applied to the bar in a manner that prevents any members or devices used to support the bar from contacting the package.

(3) Packages weighing less than 227 kg (500 lbs) must be placed upon a flat, essentially unyielding, horizontal surface and subjected to a weight of 227 kg (500 lbs) falling from a height of 3 m (9.84 ft) and striking in the position expected to result in maximum damage at the conclusion of the test sequence. The end of the weight contacting the package must be a solid probe made of mild steel. The probe must be the shape of the frustum of a right circular cone, 30.5 cm (12 in) long, 20.3 cm (8 in) in diameter at the base, and 2.54 cm (1 in) in diameter at the end. The longitudinal axis of the probe must be perpendicular to the horizontal surface. For packages weighing 227 kg (500 lbs) or more, the base of the probe must be placed on a flat, essentially unyielding horizontal surface and the package dropped from a height of 3 m (9.84 ft) onto the probe, striking in the position expected to result in maximum damage at the conclusion of the test sequence.

(4) The package must be firmly restrained and supported such that its longitudinal axis is inclined approximately 45° to the horizontal. The area of the package which made first contact with the impact surface in paragraph (a)(1) of this section must be in the lowermost position. The package must be struck at approximately the center of its vertical projection by the end of a structural steel angle section falling from a height of at least 45.7 m (150 ft). The angle section must be at least 1.83 m (6 ft) in length with equal legs at least 12.7 cm (5 in) long and 1.27 cm (0.5 in) thick. The angle section must be guided in such a way as to fall end-on, without tumbling. The package must be rotated approximately 90° about its longitudinal axis and struck by the steel angle section falling as before.

(5) The package must be exposed to luminous flames from a pool fire of JP–4 or JP–5 aviation fuel for a period of at least 60 minutes. The luminous flames must extend an average of at least 0.914 m (3 ft) and no more than 3.05 m (10 ft) beyond the package in all horizontal directions. The position and orientation of the package in relation to the fuel must be that which is expected to result in maximum damage at the conclusion of the test sequence. An alternate method of thermal testing may be substituted for this fire test provided that the alternate test is not of shorter duration and would not result in a lower heating rate to the package. At the conclusion of the thermal test, the package must be allowed to cool naturally or must be cooled by water sprinkling, whichever is expected to result in maximum damage at the conclusion of the test sequence.

(6) Immersion under at least 0.914 m (3 ft) of water.

(b) *Individual free-fall impact test.* (1) An undamaged package must be physically subjected to an impact at a velocity not less than the calculated terminal free-fall velocity at mean sea level at a right angle onto a flat essentially unyielding horizontal surface, in the orientation (e.g., side, end, corner) expected to result in maximum damage.

(2) This test is not required if the calculated terminal free-fall velocity of the package is less than 129 m/sec (423 ft/sec) or if a velocity not less than either 129 m/sec (423 ft/sec) or the calculated terminal free-fall velocity of the package is used in the sequential test of paragraph (a)(1) of this section.

(c) *Individual deep submersion test.* An undamaged package must be physically submerged and physically subjected to an external water pressure of at least 4.14 MPa (600 lbs/in²).

§ 71.75 Qualification of special form radioactive material.

(a) Evaluation of the contents of a single package for qualification as special form must include a determination of the effect on a specimen of those contents of the tests specified in § 71.77.

(1) Specimens (solid radioactive material or capsules) to be tested must be as normally prepared for loading in a single package, with the radioactive material duplicated as closely as practicable.

(2) A different specimen may be used for each of the tests.

(b) The specimen must not break or shatter when subjected to the impact, percussion, or bending tests.

(c) The specimen must not melt or disperse when subjected to the heat test.

(d) After each test, leak-tightness or indispersibility of the specimen must be determined by a method no less sensitive than the following leaching assessment procedure. For a capsule resistant to corrosion by water and which has an internal void volume greater than 0.1 ml (6.10×10^{-3} in^3), an alternative to the leaching assessment is a demonstration of leak-tightness of 10^{-4} torr-l/s (.03 lb-in/s) (based on air at 25 °C (77 °F) and one atmosphere differential pressure) for solid radioactive content, or 10^{-6} torr-l/s (3×10^{-4} lb-in/s) for liquid or gaseous radioactive content.

(1) The specimen must be immersed for 7 days in water at ambient temperature. The water must have a pH of 6–8 and a maximum conductivity of 10 μmho/cm at 20 °C (68 °F). Encapsulated material is not subject to the 7-day requirement.

(2) The water with specimen must then be heated to a temperature of 50 °C±5 °C (122°±9 °F) and maintained at this temperature for 4 hours.

(3) The activity of the water must be determined at that time.

(4) The specimen must then be stored for at least 7 days in still air of humidity not less than 90 percent and a temperature not less than 30 °C (86 °F).

(5) The specimen must then be immersed in water having a pH of 6–8 and a maximum conductivity of 10 μmho/cm at 20 °C, and the water with specimen heated to 50 °±5 °C (122°±9°F) and maintained at this temperature for 4 hours.

(6) The activity of the water must be determined at that time.

(7) The activities determined in paragraphs (d)(3) and (d)(6) of this section must not exceed 0.0541 μCi (2 kBq).

(e) A specimen that comprises or simulates radioactive material contained in a sealed capsule need not be subjected to the leak-tightness procedure specified in this section provided it is alternatively subjected to any of the tests prescribed in the International Organization for Standardization document ISO/TR4826–1979(E), "Sealed radioactive sources—Leak test methods",[3] which are acceptable to NRC.

§ 71.77 Tests for special form radioactive material.

(a) *Impact test.* The specimen must fall onto a flat, horizontal, essentially unyielding surface from a height of not less than 9 m (29.5 ft).

(b) *Percussion test.* The specimen must be placed on a sheet of lead which is supported by a smooth solid surface and struck by the flat face of a steel billet so as to produce an impact equivalent to that resulting from a free fall of 1.4 kg (3.09 lbs) through 1 m (39.4 in). The flat face of the billet must be 25 mm (0.984 in) in diameter with the edges rounded to a radius of 3±0.3 mm (0.118±0.0118 in). The lead, of hardness number 3.5 to 4.5 on the Vickers scale and not more than 25 mm (0.984 in) thick, must cover an area greater than that covered by the specimen. A fresh surface of lead must be used for each impact. The billet must strike the specimen so as to cause maximum damage.

(c) *Bending test.* The test is applicable only to long, slender sources with both a minimum length of 10 cm (3.94 in) and a length to minimum width ratio not less than 10. The specimen must be rigidly clamped in a horizontal position so that one half of its length protrudes from the face of the clamp. The orientation of the specimen must ensure that the specimen will suffer maximum damage when its free end is struck by the flat face of a steel billet. The billet must strike the specimen so as to produce an impact equivalent to that resulting from a free vertical fall of 1.4 kg (3.09 lb) through 1 m (39.4 in). The flat face of the billet must be 25 mm (0.984 in) in diameter with the edges rounded off to a radius of 3±0.3 mm (0.118±0.0118 in).

(d) *Heat test.* The specimen must be heated to a temperature of not less than 800 °C (1472 °F) in an atmosphere which is essentially air, and held at that temperature for a period of 10 minutes and must then be allowed to cool.

(e) A specimen that comprises or simulates radioactive material contained in a sealed capsule need not be subjected to the following:

(1) The impact test and the percussion test of this section provided it is alternatively subjected to the Class 4 impact test prescribed in the International Organization for Standardization document ISO 2919–1980(E), "Sealed radioactive sources—Classification";[4] and

(2) The heat test of this section provided it is alternatively subjected to the Class 6 temperature test specified in the International Organization for Standardization document ISO 2919–1980(E), "Sealed radioactive sources—Classification.".[5]

Subpart G—Operating Controls and Procedures

§ 71.81 Applicability of operating controls and procedures.

A licensee subject to this part, who under a general or specific license transports licensed material or delivers licensed material to a carrier for transport, shall comply with the requirements of this Subpart G, with the quality assurance requirements of Subpart H of this part, and with the general provisions of Subpart A of this part.

§ 71.83 Assumptions as to unknown properties.

When the isotopic abundance, mass, concentration, degree of irradiation, degree of moderation, or other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the known properties have credible values that will cause the maximum neutron multiplication.

§ 71.85 Preliminary determinations.

Prior to the first use of any packaging for the shipment of licensed material—

(a) The licensee shall ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects which could significantly reduce the effectiveness of the packaging;

(b) Where the maximum normal operating pressure will exceed 35 kPa (5.08 lb/in^2) gauge, the licensee shall test the containment system at an internal pressure at least 50 percent higher than the maximum normal operating pressure to verify the capability of that system to maintain its structural integrity at that pressure; and

(c) The licensee shall conspicuously and durably mark the packaging with its model number, serial number, gross weight, and a package identification number assigned by the Nuclear Regulatory Commission. Prior to applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the Commission.

[3] Available from American National Standards Institute, 1430 Broadway, New York, NY 10018.

[4] Ibid.

[5] Ibid.

§ 71.87 Routine determinations.

Prior to each shipment of licensed material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this part and of the license. The licensee shall determine that—

(a) The package is proper for the contents to be shipped;

(b) The package is in unimpaired physical condition except for superficial defects such as marks or dents;

(c) Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;

(d) Any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

(e) Any pressure relief device is operable and set in accordance with written procedures;

(f) The package has been loaded and closed in accordance with written procedures;

(g) For fissile material, any moderator or neutron absorber, if required, is present and in proper condition;

(h) Any structural part of the package which could be used to lift or tie down the package during transport is rendered inoperable for that purpose unless it satisfies the design requirements of § 71.45;

(i)(1) The level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable. The level of non-fixed radioactive contamination may be determined by wiping an area of 300 square centimeters of the surface concerned with an absorbent material, using moderate pressure, and measuring the activity on the wiping material. Sufficient measurements must be taken in the most appropriate locations to yield a representative assessment of the non-fixed contamination levels. Except as provided under paragraph (i)(2) of this section, the amount of radioactivity measured on any single wiping material when averaged over the surface wiped, must not exceed the limits given in Table V of this part at any time during transport. Other methods of assessment of equal or greater efficiency may be used. When other methods are used, the detection efficiency of the method used must be taken into account, and in no case may the non-fixed contamination on the external surfaces of the package exceed 10 times the limits listed in Table V.

TABLE V.—REMOVABLE EXTERNAL RADIOACTIVE CONTAMINATION WIPE LIMITS

Contaminant	Maximum permissible limits		
	Bq/cm²	μCi/cm²	dpm/cm²
Beta-gamma emitting radionuclides; all radionuclides with half-lives less than 10 days, natural uranium; natural thorium; uranium-235; uranium-238; thorium-232; thorium-228 and thorium-230 when contained in ores or physical concentrates	0.40	1.08×10^{-5}	22.0
All other alpha emitting radionuclides	0.04	1.08×10^{-6}	2.2

(2) In the case of packages transported as exclusive use shipments by rail or highway only, the non-fixed radioactive contamination at any time during transport must not exceed 10 times the levels prescribed in paragraph (i)(1) of this section. The levels at the beginning of transport must not exceed the levels prescribed in paragraph (i)(1) of this section;

(j) External radiation levels around the package and around the vehicle, if applicable, will not exceed the limits specified in § 71.47 at any time during transportation; and

(k) Accessible package surface temperatures will not exceed the limits specified in § 71.43(g) at any time during transportation.

§ 71.88 Air transport of plutonium.

(a) Notwithstanding the provisions of any general licenses and notwithstanding any exemptions stated directly in this part or included indirectly by citation of 49 CFR Chapter I, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

(1) The plutonium is contained in a medical device designed for individual human application; or

(2) The plutonium is contained in a material in which the specific activity is not greater than 0.002 μCi/g (74 Bq/g) of material and in which the radioactivity is essentially uniformly distributed; or

(3) The plutonium is shipped in a single package containing no more than an A_2 quantity of plutonium in any isotope or form and is shipped in accordance with § 71.5 of this part; or

(4) The plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the Commission.

(b) Nothing in paragraph (a) of this section is to be interpreted as removing or diminishing the requirements of § 73.24 of this chapter.

(c) For a shipment of plutonium by air which is subject to paragraph (a)(4) of this section, the licensee shall, through special arrangement with the carrier, require the following operational controls.

(1) A plutonium package weighing less than 40 kg (88 lbs), and having its height and diameter both less than 50 cm (19.7 in), must be stowed aboard the aircraft on the main deck or the lower cargo compartment in the aft-most location that is possible for cargo of its size and weight. Any other plutonium package must be stowed aboard the aircraft on the main deck in the aft-most location that is possible for cargo of its size and weight. No other type of cargo may be stowed aft of a plutonium package.

(2) A plutonium package must be secured and restrained to prevent shifting under normal transport. A plutonium packaging weighing 40 kg (88 lbs) or more must be securely cradled and tied down to the main deck of the aircraft such that the tiedown system is capable of providing package restraint against the following inertial forces acting separately relative to the deck of the aircraft: Upward, 2g; Forward, 9g; Sideward, 1.5g; Downward, 4.5g.

(3) A plutonium package weighing less than 40 kg (88 lbs), and having its height and diameter both less than 50 cm (19.7 in), must not be transported aboard an aircraft carrying other cargo bearing the "Explosive A" label. Any other plutonium package must not be transported aboard an aircraft carrying other cargo bearing any of the following hazardous material labels:

Explosive A
Explosive B
Explosive C
Spontaneously Combustible
Dangerous When Wet
Organic Peroxide
Non-Flammable Gas
Flammable Liquid
Flammable Solid
Flammable Gas
Oxidizer
Corrosive

The above restriction does not apply to hazardous material cargo labeled solely as:

Radioactive I
Radioactive II
Radioactive III

Magnetized Materials
Poison
Poison Gas
Irritant
Etiologic Agent

§ 71.89 Opening instructions.

Prior to delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to or otherwise made available to the consignee for the consignee's use in accordance with § 20.205 of this chapter.

§ 71.91 Records.

(a) Each licensee shall maintain for a period of 3 years after shipment a record of each shipment of licensed material not exempt under § 71.10, showing where applicable—

(1) Identification of the packaging by model number and serial number;

(2) Verification that there are no significant defects in the packaging, as shipped;

(3) Volume and identification of coolant;

(4) Type and quantity of licensed material in each package, and the total quantity of each shipment;

(5) For each item of irradiated fissile material;

(i) Identification by model number and serial number;

(ii) Irradiation and decay history to the extent appropriate to demonstrate that its nuclear and thermal characteristics comply with license conditions; and

(iii) Any abnormal or unusual condition relevant to radiation safety.

(6) Date of the shipment;

(7) For fissile packages and for Type B packages, any special controls exercised;

(8) Name and address of the transferee;

(9) Address to which the shipment was made; and

(10) Results of the determinations required by § 71.87.

(b) The licensee shall make available to the Commission for inspection, upon reasonable notice, all records required by this part.

(c) The licensee shall maintain, during the life of the packaging to which they pertain, sufficient quality assurance records to furnish documentary evidence of the quality of packaging components which have safety significance and of services affecting quality. The records to be maintained include results of the determinations required by § 71.85, of monitoring, inspection, and auditing of work performance during the design, fabrication, assembly, testing, modification, maintenance, and repair of the packaging. Where some person other than the licensee provides these services, a certification from that person that the services have been performed and that adequate records of them are being maintained will suffice.

§ 71.93 Inspection and tests.

(a) The licensee shall permit the Commission, at all reasonable times, to inspect the licensed material, packaging, premises, and facilities in which the licensed material or packaging is used, produced, tested, stored, or shipped.

(b) The licensee shall perform, and permit the Commission to perform, any tests the Commission deems necessary or appropriate for the administration of the regulations in this chapter.

(c) The licensee shall notify the Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in Appendix A of Part 73 of this chapter at least 45 days prior to fabrication of a package to be used for the shipment of licensed material having a decay heat load in excess of 5 kW or with a maximum normal operating pressure in excess of 103 kPa (14.9 lb/in^2) gauge.

§ 71.95 Reports.

The licensee shall report to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days—

(a) Any instance in which there is significant reduction in the effectiveness of any Type B or fissile approved packaging during use;

(b) Details of any defects with safety significance in Type B or fissile packaging after first use, with the means employed to repair the defects and prevent their recurrence; and

(c) Instances in which the conditions of approval in the certificate of compliance were not observed in making a shipment.

§ 71.97 Advance notification of shipment of nuclear waste.

(a) Except as specified in paragraph (b) of this section, prior to the transport or delivery to a carrier for transport of licensed material outside the confines of the licensee's plant or other place of use or storage, each licensee shall provide advance notification to the governor of a State, or the governor's designee, of the shipment to, through, or across the boundary of the State.

(b) Advance notification is required only when—

(1) The licensed material is required by this part to be in Type B packaging for transportation;

(2) The licensed material other than irradiated fuel is being transported to, through, or across State boundaries to a disposal site or to a collection point for transport to a disposal site;

(3) The quantity of licensed material in a single package exceeds the smallest of the following:

(i) 3,000 times the A_1 value of the radionuclides as specified in Appendix A, Table A–1 for special form radioactive material;

(ii) 3,000 times the A_1 value for the radionuclides as specified in Appendix A, Table A–1 for normal form radioactive material; or

(iii) 30,000 Ci(1.11 PBq); and

(4) The quantity of irradiated fuel is less than that subject to advance notification requirements of 73.37(f) of this chapter.

(c) *Procedures for submitting advance notification.* (1) The notification must be made in writing to the office of each appropriate governor or governor s designee and to the Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in Appendix A of Part 73 of this chapter.

(2) A notification delivered by mail must be postmarked at least 7 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur.

(3) A notification delivered by messenger must reach the office of the governor or of the governor's designee at least 4 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur.

(i) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the **Federal Register** on June 30, 1987 (52 FR 24357).

(ii) The list will be published annually in the **Federal Register** on or about June 30 to reflect any changes in information.

(iii) A list of the names and mailing addresses of the governors' designees is available upon request from the Director, State, Local and Indian Tribe Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(4) The licensee shall retain a copy of the notification as a record for 1 year.

(d) *Information to be furnished in advance notification of shipment.* Each advance notification of shipment of nuclear waste must contain the following information:

(1) The name, address, and telephone number of the shipper, carrier, and receiver of the nuclear waste shipment;

(2) A description of the nuclear waste contained in the shipment, as specified

in the regulations of DOT in 49 CFR Part 172, §§ 172.202 and 172.203(d);

(3) The point of origin of the shipment and the 7-day period during which departure of the shipment is estimated to occur;

(4) The 7-day period during which arrival of the shipment at state boundaries is estimated to occur;

(5) The destination of the shipment, and the 7-day period during which arrival of the shipment is estimated to occur; and

(6) A point of contact with a telephone number for current shipment information.

(e) *Revision notice.* A licensee who finds that schedule information previously furnished to a governor or governor's designee in accordance with this section will not be met shall telephone a responsible individual in the office of the governor of the State or of the governor's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for 1 year.

(f) *Cancellation notice.* (1) Each licensee who cancels a nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each State or the governor's designee previously notified and to the Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in Appendix A of Part 73 of this chapter.

(2) The licensee shall state in the notice that it is a cancellation and shall identify the advance notification which is being cancelled. The licensee shall retain a copy of the notice as a record for 3 years.

§ 71.99 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, (the Act) or Title II of the Energy Reorganization Act of 1974, as amended, or any regulation or order issued under the acts. A court order may be obtained for the payment of a civil penalty imposed under section 234 of the Act for violation of sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Act, or section 206 of the Energy Reorganization Act of 1974, as amended; or any rule, regulation, or order issued under the Acts, or any term, condition, or limitation of any license issued under the Acts, or for any violation for which a license may be revoked under section 186 of the Act. Any person who willfully violates any provision of the Act or any regulation or order issued under the Acts may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

Subpart H—Quality Assurance

§ 71.101 Quality assurance requirements.

(a) *Purpose.* This subpart describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging which are important to safety. As used in this subpart, "quality assurance" comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(b) *Establishment of program.* Each licensee shall establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of this subpart, and satisfying any specific provisions which are applicable to the licensee's activities including procurement of packaging. The licensee shall apply the applicable criteria in a graded approach and to an extent that is consistent with their importance to safety.

(c) *Approval of program.* Prior to the use of any package for the shipment of licensed material subject to this subpart, each licensee shall obtain Commission approval of its quality assurance program. Each licensee shall file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied, with the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(d) *Existing package designs.* The provisions of this paragraph deal with packages which have been approved for use in accordance with this part prior to January 1, 1979, and which have been designed in accordance with the provisions of this part in effect at the time of application for package approval. Those packages will be accepted as having been designed in accordance with a quality assurance program which satisfies the provisions of paragraph (b) of this section.

(e) *Existing packages.* The provisions of this paragraph deal with packages which have been approved for use in accordance with this part prior to January 1, 1979, have been at least partially fabricated prior to that date, and for which the fabrication is in accordance with the provisions of this part in effect at the time of application for approval of package design. These packages will be accepted as having been fabricated and assembled in accordance with a quality assurance program which satisfies the provisions of paragraph (b) of this section.

(f) *Previously approved programs.* A Commission-approved quality assurance program which satisfies the applicable criteria of Appendix B of Part 50 of this chapter and which is established, maintained, and executed with regard to transport packages will be accepted as satisfying the requirements of paragraph (b) of this section. Prior to first use, the licensee shall notify the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of its intent to apply its previously approved Appendix B program to transportation activities. The licensee shall identify the program by date of submittal to the Commission, Docket Number, and date of Commission approval.

§ 71.103 Quality assurance organization.

(a) The licensee [6] shall be responsible for the establishment and execution of the quality assurance program. The licensee may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program. The licensee shall clearly establish and delineate in writing the authority and duties of persons and organizations performing activities affecting the safety-related functions of structures, systems, and components. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions.

(b) The quality assurance functions are—

(1) Assuring that an appropriate quality assurance program is established and effectively executed; and

(2) Verifying, by procedures such as checking, auditing, and inspection, that activities affecting the safety-related

[6] While the term "licensee" is used in these criteria, the requirements are applicable to whatever design, fabrication, assembly, and testing of the package is accomplished with respect to a package prior to the time a package approval is issued.

functions have been performed correctly.

(c) The persons and organizations performing quality assurance functions must have sufficient authority and organizational freedom to—

(1) Identify quality problems;

(2) Initiate, recommend, or provide solutions; and

(3) Verify implementation of solutions.

(d) The persons and organizations performing quality assurance functions shall report to a management level which assures that the required authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations, are provided.

(e) Because of the many variables involved, such as the number of personnel, the type of activity being performed, and the location or locations where activities are performed, the organizational structure for executing the quality assurance program may take various forms provided that the persons and organizations assigned the quality assurance functions have the required authority and organizational freedom.

(f) Irrespective of the organizational structure, the individual(s) assigned the responsibility for assuring effective execution of any portion of the quality assurance program at any location where activities subject to this section are being performed must have direct access to the levels of management necessary to perform this function.

§ 71.105 Quality assurance program.

(a) The licensee shall establish, at the earliest practicable time, consistent with the schedule for accomplishing the activities, a quality assurance program which complies with the requirements of this section. The licensee shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used. The licensee shall identify the material and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

(b) The licensee, through its quality assurance program, shall provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material. The licensee shall assure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee shall take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.

(c) The licensee shall base the requirements and procedures of its quality assurance program on the following considerations concerning the complexity and proposed use of the package and its components:

(1) The impact of malfunction or failure of the item to safety;

(2) The design and fabrication complexity or uniqueness of the item;

(3) The need for special controls and surveillance over processes and equipment;

(4) The degree to which functional compliance can be demonstrated by inspection or test; and

(5) The quality history and degree of standardization of the item.

(d) The licensee shall provide for indoctrination and training of personnel performing activities affecting quality as necessary to assure that suitable proficiency is achieved and maintained. The licensee shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program which they are executing.

§ 71.107 Package design control.

(a) The licensee shall establish measures to assure that applicable regulatory requirements and the package design, as specified in the license for those materials and components to which this section applies, are correctly translated into specifications, drawings, procedures, and instructions. These measures must include provisions to assure that appropriate quality standards are specified and included in design documents and that deviations from standards are controlled. Measures must be established for the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the safety-related functions of the materials, parts, and components of the packaging.

(b) The licensee shall establish measures for the identification and control of design interfaces and for coordination among participating design organizations. These measures must include the establishment of written procedures among participating design organizations for the review, approval, release, distribution, and revision of documents involving design interfaces. The design control measures must provide for verifying or checking the adequacy of design, by methods such as design reviews, alternate or simplified calculational methods, or by a suitable testing program. For the verifying or checking process, the licensee shall designate individuals or groups other than those who were responsible for the original design, but who may be from the same organization. Where a test program is used to verify the adequacy of a specific design feature in lieu of other verifying or checking processes, the licensee shall include suitable qualification testing of a prototype or sample unit under the most adverse design conditions. The licensee shall apply design control measures to items such as the following:

(1) Criticality physics, radiation shielding, stress, thermal, hydraulic, and accident analyses;

(2) Compatibility of materials;

(3) Accessibility for inservice inspection, maintenance, and repair;

(4) Features to facilitate decontamination; and

(5) Delineation of acceptance criteria for inspections and tests.

(c) The licensee shall subject design changes, including field changes, to design control measures commensurate with those applied to the original design. Changes in the conditions specified in the package approval require NRC approval.

§ 71.109 Procurement document control.

The licensee shall establish measures to assure adequate quality is required in the documents for procurement of material, equipment, and services, whether purchased by the licensee or by its contractors or subcontractors. To the extent necessary, the licensee shall require contractors or subcontractors to provide a quality assurance program consistent with the applicable provisions of this part.

§ 71.111 Instructions, procedures, and drawings.

The licensee shall prescribe activities affecting quality by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall require that these instructions,

procedures, and drawings be followed. The instructions, procedures, and drawings must include appropriate quantitative or qualitative acceptance criteria for determining that important activities have been satisfactorily accomplished.

§ 71.113 Document control.

The licensee shall establish measures to control the issuance of documents such as instructions, procedures, and drawings, including changes, which prescribe all activities affecting quality. These measures must assure that documents, including changes, are reviewed for adequacy, approved for release by authorized personnel, and distributed and used at the location where the prescribed activity is performed. These measures must assure that changes to documents are reviewed and approved.

§ 71.115 Control of purchased material, equipment, and services.

(a) The licensee shall establish measures to assure that purchased material, equipment, and services, whether purchased directly or through contractors and subcontractors, conform to the procurement documents. These measures must include provisions, as appropriate, for source evaluation and selection, objective evidence of quality furnished by the contractor or subcontractor, inspection at the contractor or subcontractor source, and examination of products upon delivery.

(b) The licensee shall have available documentary evidence that material and equipment conform to the procurement specifications prior to installation or use of the material and equipment. The licensee shall retain or have available this documentary evidence for the life of the package to which it applies. The licensee shall assure that the evidence is sufficient to identify the specific requirements met by the purchased material and equipment.

(c) The licensee shall assess the effectiveness of the control of quality by contractors and subcontractors at intervals consistent with the importance, complexity, and quantity of the product or services.

§ 71.117 Identification and control of materials, parts, and components.

The licensee shall establish measures for the identification and control of materials, parts, and components. These measures must assure that identification of the item is maintained by heat number, part number, or other appropriate means, either on the item or on records traceable to the item, as required throughout fabrication, installation, and use of the item. These identification and control measures must be designed to prevent the use of incorrect or defective materials, parts, and components.

§ 71.119 Control of special processes.

The licensee shall establish measures to assure that special processes, including welding, heat treating, and nondestructive testing, are controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable codes, standards, specifications, criteria, and other special requirements.

§ 71.121 Internal inspection.

The licensee shall establish and execute a program for inspection of activities affecting quality by or for the organization performing the activity to verify conformance with the documented instructions, procedures, and drawings for accomplishing the activity. The inspection must be performed by individuals other than those who performed the activity being inspected. Examination, measurements, or tests of material or products processed must be performed for each work operation where necessary to assure quality. If direct inspection of processed material or products is not carried out, indirect control by monitoring processing methods, equipment, and personnel must be provided. Both inspection and process monitoring must be provided when quality control is inadequate without both. If mandatory inspection hold points, which require witnessing or inspecting by the licensee's designated representative and beyond which work should not proceed without the consent of its designated representative, are required, the specific hold points must be indicated in appropriate documents.

§ 71.123 Test control.

The licensee shall establish a test program to assure that all testing required to demonstrate that the packaging components will perform satisfactorily in service is identified and performed in accordance with written test procedures which incorporate the requirements of this part and the requirements and acceptance limits contained in the package approval. The test procedures must include provisions for assuring that all prerequisites for the given test are met, that adequate test instrumentation is available and used, and that the test is performed under suitable environmental conditions. The licensee shall document and evaluate the test results to assure that test requirements have been satisfied.

§ 71.125 Control of measuring and test equipment.

The licensee shall establish measures to assure that tools, gauges, instruments, and other measuring and testing devices used in activities affecting quality are properly controlled, calibrated, and adjusted at specified times to maintain accuracy within necessary limits.

§ 71.127 Handling, storage, and shipping control.

The licensee shall establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. When necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels must be specified and provided.

§ 71.129 Inspection, test, and operating status.

(a) The licensee shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures must provide for the identification of items which have satisfactorily passed required inspections and tests where necessary to preclude inadvertent bypassing of the inspections and tests.

(b) The licensee shall establish measures to identify the operating status of components of the packaging, such as tagging valves and switches, to prevent inadvertent operation.

§ 71.131 Nonconforming materials, parts, or components.

The licensee shall establish measures to control materials, parts, or components which do not conform to the licensee's requirements in order to prevent their inadvertent use or installation. These measures must include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items must be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

§ 71.133 Corrective action.

The licensee shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. In the case of a

significant condition adverse to quality, the measures must assure that the cause of the condition is determined and corrective action taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken must be documented and reported to appropriate levels of management.

§ 71.135 Quality assurance records.

(a) The licensee shall maintain sufficient written records to furnish evidence of activities affecting quality. The records must include the following: design records, records of use and the results of reviews, inspections, tests, audits, monitoring of work performance, and materials analyses. The records must include closely related data such as qualifications of personnel, procedures, and equipment. Inspection and test records must, at a minimum, identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any deficiencies noted. Records must be identifiable and retrievable. Records pertaining to the fabrication of the package must be retained for the life of the package to which they apply. Records pertaining to the use of the package for shipment of radioactive material must be retained for a period of 3 years after the shipment.

(b) The licensee shall establish a records retention program which is consistent with the applicable regulations, designating factors such as duration, location, and assigned responsibility.

§ 71.137 Audits.

The licensee shall carry out a comprehensive system of planned and periodic audits to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program. The audits must be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited. Audited results must be documented and reviewed by management having responsibility in the area audited. Follow-up action, including reaudit of deficient areas, must be taken where indicated.

Appendix A—Determination of A_1 and A_2

I. Values of A_1 and A_2 for individual radionuclides, which are the bases for many activity limits elsewhere in these regulations are given in Table A–1. The curie values specified are obtained by extending the Terabecquerel (TBq) figure, after conversion to Curies, (Ci) to 3 significant figures. This ensures that the magnitude of A_1 and A_2 in Ci is always equal to that in TBq to a tenth of 1 percent.

II. For individual radionuclides whose identities are known, but which are not listed in Table A–1, the determination of the values of A_1 and A_2 shall require Commission approval, except that the values of A_1 and A_2 in Table A–2 may be used without obtaining Commission approval.

III. In the calculations of A_1 and A_2 for a radionuclide not in Table A–1, a single radioactive decay chain in which radionuclides are present in their naturally occurring proportions and in which no daughter nuclide has a half-life either longer than 10 days or longer than that of the parent nuclide shall be considered as a single radionuclide, and the activity to be taken into account and the A_1 or A_2 value to be applied shall be those corresponding to the parent nuclide of that chain. In the case of radioactive decay chains in which any daughter nuclide has a half-life either longer than 10 days or greater than that of the parent nuclide, the parent and those daughter nuclides shall be considered as mixtures of different nuclides.

IV. For mixtures of radionuclides whose identities and respective activities are known, the following conditions shall apply:

(a) For special form radioactive material:

$$\sum_i \frac{B(i)}{A_1(i)} \text{ less than or equal to } 1$$

(b) For other forms of radioactive material

$$\sum_i \frac{B(i)}{A_2(i)} \text{ less than or equal to } 1$$

where B(i) is the activity of radionuclide i and $A_1(i)$ and $A_2(i)$ are the A_1 and A_2 values for radionuclide i, respectively.

Alternatively, an A_2 value for mixtures may be determined as follows:

$$A_2 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_2(i)}}$$

where f(i) is the fraction of activity of nuclide i in the mixture and $A_2(i)$ is the appropriate A_2 value for nuclide i.

V. When the identity of each radionuclide is known but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest A_1 or A_2 value, as appropriate, for the radionuclides in each group may be used in applying the formulas in paragraph IV. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A_1 or A_2 values for the alpha emitters or beta/gamma emitters, respectively.

TABLE A–1 A_1 AND A_2 VALUES FOR RADIONUCLIDES

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (Ci/g)
^{225}Ac	Actinium(89)	0.6	16.2	1×10^{-2}	0.270	5.8×10^{4}
^{227}Ac		40	1080	2×10^{-5}	5.41×10^{-4}	7.2×10^{1}
^{228}Ac		0.6	16.2	0.4	10.8	2.2×10^{6}
^{105}Ag	Silver(47)	2	54.1	2	54.1	3.1×10^{4}
^{108m}Ag		0.6	16.2	0.6.2	16.2	6.6×10^{2}
^{110m}Ag		0.4	10.8	0.4	10.8	4.7×10^{3}
^{111}Ag		0.6	16.2	0.5	13.5	1.6×10^{5}
^{26}Al	Aluminum(13)	0.4	10.8	0.4	10.8	1.9×10^{-2}
^{241}Am	Americium(95)	2	54.1	2×10^{-4}	5.4×10^{-3}	3.2
^{242m}Am		2	54.1	2×10^{-4}	5.41×10^{-3}	8.1×10^{5}
^{243}Am		2	54.1	2×10^{-4}	5.41×10^{-3}	1.9×10^{-1}
^{37}Ar	Argon(18)	40	1080	40	1080	1.0×10^{-5}
^{39}Ar		20	541	20	541	3.4×10^{1}
^{41}Ar		0.6	16.2	0.6	16.2	4.3×10^{7}
^{42}Ar		0.2	5.41	0.2	5.41	2.6×10^{2}
^{72}As	Arsenic(33)	0.2	5.41	0.2	5.41	1.7×10^{6}

TABLE A-1 A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (Ci/g)
^{73}As		40	1080	40	1080	2.4×10^{4}
^{74}As		1	27.0	0.5	13.5	1.0×10^{5}
^{76}As		0.2	5.41	0.2	5.41	1.6×10^{6}
^{77}As		20	541	0.5	13.5	1.1×10^{6}
^{211}At	Astatine(85)	30	811	2	54.1	2.1×10^{6}
^{193}Au	Gold(79)	6	162	6	162	9.3×10^{5}
^{194}Au		1	27.0	1	27.0	4.1×10^{5}
^{195}Au		10	270	10	270	3.7×10^{3}
^{196}Au		2	54.1	2	54.1	1.2×10^{5}
^{198}Au		3	81.1	0.5	13.5	2.5×10^{5}
^{199}Au		10	270	0.9	24.3	2.1×10^{5}
^{131}Ba	Barium(56)	2	54.1	2	54.0	8.7×10^{4}
^{133m}Ba		10	270	0.9	24.3	6.1×10^{5}
^{133}Ba		3	81.1	3	81.1	4.0×10^{2}
^{140}Ba		0.4	10.8	0.4	10.8	7.3×10^{4}
^{7}Be	Beryllium(4)	20	541	20	540	3.5×10^{5}
^{10}Be		20	541	0.5	13.5	1.4×10^{-2}
^{205}Bi	Bismuth(83)	0.6	16.2	0.6	16.2	4.2×10^{4}
^{206}Bi		0.3	8.11	0.3	8.11	9.9×10^{4}
^{207}Bi		0.7	18.9	0.7	18.9	2.2×10^{2}
^{210m}Bi		0.3	8.11	3×10^{-2}	0.811	6.5×10^{-4}
^{210}Bi		0.6	16.2	0.5	13.5	1.2×10^{5}
^{212}Bi		0.3	8.11	0.3	8.11	1.5×10^{7}
^{247}Bk	Berkelium(97)	2	54.0	2×10^{-4}	5.41×10^{-3}	1.0
^{249}Bk		40	1080	8×10^{-2}	2.16	1.8×10^{3}
^{76}Br	Bromine(35)	0.3	8.11	0.3	8.11	2.6×10^{6}
^{77}Br		3	81.1	3	81.1	7.1×10^{5}
^{82}Br		0.4	108	0.4	10.8	1.1×10^{6}
^{11}C	Carbon(6)	1	270	0.5	13.5	8.4×10^{8}
^{14}C		40	1080	2	54.0	4.6
^{41}Ca	Calcium(20)	40	1080	40	1080	1.1×10^{-1}
^{45}Ca		40	1080	0.9	24.3	1.9×10^{4}
^{47}Ca		0.9	24.3	0.5	13.5	5.9×10^{5}
^{109}Cd	Cadmium(48)	40	1080	1	27.0	2.6×10^{3}
^{113m}Cd		20	540	9×10^{-2}	2.43	2.3×10^{2}
^{115m}Cd		0.3	8.11	0.3	8.11	2.6×10^{4}
^{115m}Cd		4	108	0.5	13.5	5.1×10^{5}
^{139}Ce	Cerium(58)	6	162	6	162	6.5×10^{3}
^{141}Ce		10	270	0.5	13.5	2.8×10^{4}
^{143}Ce		0.6	16.2	0.5	13.5	6.6×10^{5}
^{144}Ce		0.2	5.41	0.2	5.41	3.2×10^{3}
^{248}Cf	Californium(98)	30	811	$3\times10-^{3}$	$8.11\times10-^{3}$	1.5×10^{3}
^{249}Cf		2	54.1	$2\times10-^{4}$	$5.41\times10-^{3}$	3.1
^{250}Cf		5	135	$5\times10-^{4}$	$1.35\times10-^{2}$	1.3×10^{2}
^{251}Cf		2	54.0	$2\times10-^{4}$	$5.41\times10-^{3}$	1.8
^{252}Cf		0.1	2.70	$1\times10-^{3}$	$2.70\times10-^{2}$	6.5×10^{2}
^{253}Cf		40	1080	$6\times10-^{2}$	1.62	2.9×10^{4}
^{254}Cf		$3\times10-^{3}$	$8.11\times10-^{2}$	$6\times10-^{4}$	$1.62\times10-^{2}$	8.5×10^{3}
^{36}Cl	Chlorine(17)	20	541	0.5	13.5	$3.2\times10-^{2}$
^{38}Cl		0.2	5.41	0.2	5.41	1.3×10^{8}
^{240}Cm	Curium(96)	40	1080	$2\times10-^{2}$	0.541	2.0×10^{4}
^{241}Cm		2	54.1	0.9	24.3	1.5×10^{4}
^{242}Cm		40	1080	$1\times10-^{2}$	0.270	3.3×10^{3}
^{243}Cm		3	81.1	$3\times10-^{4}$	$8.11\times10-^{3}$	4.2×10^{1}
^{244}Cm		4	1080	$4\times10-^{4}$	$1.08\times10-^{2}$	8.2×10^{5}
^{245}Cm		2	54.1	$2\times10-^{4}$	$5.41\times10-^{3}$	$1.0\times10-^{1}$
^{246}Cm		2	54.1	$2\times10-^{4}$	$5.41\times10-^{3}$	$3.1\times10-^{1}$
^{247}Cm		2	54.1	$2\times10-^{4}$	$5.41\times10-^{3}$	$9.1\times10-^{5}$
^{248}Cm		$4\times10-^{2}$	1.08	$5\times10-^{5}$	$1.35\times10-^{3}$	$3.1\times10-^{3}$
^{55}Co	Cobalt(27)	0.5	13.5	0.5	13.5	3.1×10^{6}
^{56}Co		0.3	8.11	0.3	8.11	3.0×10^{4}
^{57}Co		8	216	8	216	8.5×10^{3}
^{58m}Co		40	1080	40	1080	5.9×10^{6}
^{58}Co		1	27.0	1	27.0	3.1×10^{4}
^{60}Co		0.4	10.8	0.4	10.8	1.1×10^{3}
^{51}Cr	Chromium(24)	30	811	30	811	9.2×10^{4}
^{129}Cs	Cesium(55)	4	108	4	108	7.6×10^{5}
^{131}Cs		40	1080	40	1080	1.0×10^{5}
^{132}Cs		1	27.0	1	27.0	1.5×10^{5}

TABLE A-1 A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (Ci/g)
^{134m}Cs		40	1080	9	243	7.4×10^{6}
^{134}Cs		0.6	16.2	0.5	13.5	1.2×10^{3}
^{135}Cs		40	1080	0.9	24.3	8.8×10^{-4}
^{136}Cs		0.5	13.5	0.5	13.5	7.4×10^{4}
^{137}Cs		2	54.0	0.5	13.5	8.7×10^{1}
^{64}Cu	Copper(29)	5	135	0.9	24.3	3.8×10^{6}
^{67}Cu		9	243	0.9	24.3	7.9×10^{5}
^{159}Dy	Dysprosium(66)	20	541	20	541	5.7×10^{3}
^{165}Dy		0.6	16.2	0.5	13.5	8.2×10^{6}
^{166}Dy		0.3	8.11	0.3	8.11	2.3×10^{5}
^{169}Er	Erbium(68)	40	1080	0.9	24.3	8.2×10^{4}
^{171}Er		0.6	16.2	0.5	13.5	2.4×10^{6}
^{147}Eu	Europium(63)	2	54.1	2	54.0	4.1×10^{4}
^{148}Eu		0.5	13.5	0.5	13.5	6.1×10^{4}
^{149}Eu		20	541	20	540	8.3×10^{3}
^{150}Eu		0.7	18.9	0.7	18.9	1.7×10^{6}
^{152m}Eu		0.6	16.2	0.5	13.5	2.2×10^{6}
^{152}Eu		0.9	24.3	0.9	24.3	1.9×10^{2}
^{154}Eu		0.8	21.6	0.5	13.5	1.5×10^{2}
^{155}Eu		20	541	2	54.1	1.4×10^{3}
^{156}Eu		0.6	16.2	0.5	13.5	5.4×10^{4}
^{18}F	Fluorine(9)	1	27.0	0.5	13.5	9.3×10^{7}
^{52}Fe	Iron(26)	0.2	5.40	0.2	5.40	7.3×10^{6}
^{55}Fe		40	1080	40	1080	2.2×10^{3}
^{59}Fe		0.8	21.6	0.8	21.6	4.9×10^{4}
^{60}Fe		40	1080	0.2	5.41	2.0×10^{-2}
^{67}Ga	Gallium(31)	6	162	6	162	6.0×10^{5}
^{68}Ga		0.3	8.11	0.3	8.11	4.0×10^{7}
^{72}Ga		0.4	10.8	0.4	10.8	3.1×10^{6}
^{146}Gd	Gadolinium(64)	0.4	10.8	0.4	10.8	1.8×10^{4}
^{148}Gd		3	81.1	3×10^{-4}	8.11×10^{-3}	2.9×10^{1}
^{153}Gd		10	270	5	135	3.6×10^{3}
^{159}Gd		4	108	0.5	13.5	1.1×10^{6}
^{68}Ge	Germanium(32)	0.3	8.11	0.3	8.11	7.0×10^{3}
^{71}Ge		40	1080	40	1080	1.6×10^{5}
^{77}Ge		0.3	8.11	0.3	8.11	3.6×10^{6}
^{3}H	Hydrogen(1)		See T-Tritium			
^{172}Hf	Hafnium(72)	0.5	13.5	0.3	8.11	4.2×10^{2}
^{175}Hf		3	81.1	3	81.1	1.1×10^{4}
^{181}Hf		2	54.1	0.9	24.3	1.6×10^{4}
^{182}Hf		4	108	3×10^{-2}	0.811	2.2×10^{-4}
^{194}Hg	Mercury(80)	1	27.0	1	27.0	9.7×10^{2}
^{195m}Hg		5	135	5	135	4.0×10^{5}
^{197m}Hg		10	270	0.9	24.3	6.6×10^{5}
^{197}Hg		10	270	10	270	2.5×10^{5}
^{203}Hg		4	108	0.9	24.3	1.4×10^{4}
^{163}Ho	Holmium(67)	40	1080	40	1080	2.2
^{166m}Ho		0.6	16.2	0.3	8.11	1.8
^{166}Ho		0.3	8.11	0.3	8.11	6.9×10^{5}
^{123}I	Iodine(53)	6	162	6	162	1.9×10^{6}
^{124}I		0.9	24.3	0.9	24.3	2.5×10^{5}
^{125}I		20	541	2	54.1	1.7×10^{4}
^{126}I		2	54.1	0.9	24.3	7.8×10^{4}
^{129}I		Unlimited	Unlimited	Unlimited	Unlimited	1.6×10^{-4}
^{131}I		3	81.1	0.5	13.5	1.2×10^{5}
^{132}I		0.4	10.8	0.4	10.8	1.1×10^{7}
^{133}I		0.6	16.2	0.5	13.5	1.1×10^{6}
^{134}I		0.3	8.11	0.3	8.11	2.7×10^{7}
^{135}I		0.6	16.2	0.5	13.5	3.5×10^{6}
^{111}In	Indium(49)	2	54.1	2	54.1	4.2×10^{5}
^{113m}In		4	108	4	108	1.6×10^{7}
^{114m}In		0.3	8.11	0.3	8.11	2.3×10^{4}
^{115m}In		6	162	0.9	24.3	6.1×10^{6}
^{189}Ir	Iridium(77)	10	270	10	270	5.2×10^{4}
^{190}Ir		0.7	18.9	0.7	18.9	6.2×10^{4}
^{192}Ir		1	27.0	0.5	13.5	9.1×10^{3}
^{193m}Ir		10	270	10	270	5.7×10^{4}
^{194}Ir		0.2	5.41	0.2	5.41	8.5×10^{5}
^{42}K	Potassium(19)	0.2	5.41	0.2	5.41	6.0×10^{6}

TABLE A-1 A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (Ci/g)
^{43}K		1.0	27.0	0.5	13.5	3.3×10^{6}
^{81}Kr	Krypton(36)	40	1080	40	1080	2.1×10^{-2}
^{85}Kr		6	162	6	162	8.4×10^{6}
^{85}Kr		20	541	10	270	4.0×10^{2}
^{87}Kr		0.2	5.41	0.2	5.41	2.8×10^{7}
^{137}La	Lanthanum(57)	40	1080	2	54.1	4.4×10^{-2}
^{140}La		0.4	10.8	0.4	10.8	5.6×10^{5}
LSA	Low Specific Activity Material Definition (See § 71.4).					
^{172}Lu	Lutetium(71)	0.5	13.5	0.5	13.5	4.6×10^{6}
^{173}Lu		8	216	8	216	1.5×10^{3}
^{174m}Lu		20	541	8	216	5.4×10^{3}
^{174}Lu		8	216	4	108	5.7×10^{2}
^{177}Lu		30	811	0.9	24.3	1.1×10^{5}
MFP	Mixed Fission Products (use formula for mixture or Table A-2).					
^{28}Mg	Magnesium(12)	0.2	5.41	0.2	5.41	5.2×10^{6}
^{52}Mn	Manganese(25)	0.3	8.11	0.3	8.11	4.4×10^{5}
^{53}Mn		Unlimited	Unlimited	Unlimited	Unlimited	3.6×10^{-3}
^{54}Mn		1	270	1	27.0	8.3×10^{3}
^{56}Mn		0.2	5.41	0.2	5.41	2.2×10^{7}
^{93}Mo	Molybdenum(42)	40	1080	7	189	38
^{99}Mo		0.6	16.2	0.5	13.5	4.7×10^{5}
^{13}N	Nitrogen(7)	0.6	16.2	0.5	13.5	1.5×10^{9}
^{22}Na	Sodium(11)	0.5	13.5	0.5	13.5	6.3×10^{3}
^{24}Na		0.2	5.41	0.2	5.41	8.7×10^{6}
^{92m}Nb	Niobium(41)	0.7	18.9	0.7	18.9	1.4×10^{5}
^{93m}Nb		40	1080	6	162	1.1×10^{3}
^{94}Nb		0.6	16.2	0.6	16.2	1.9×10^{-1}
^{95}Nb		1	27.0	1	27.0	3.9×10^{4}
^{97}Nb		0.6	16.2	0.5	13.5	2.6×10^{7}
^{147}Nd	Neodymium(60)	4	108	0.5	13.5	8.0×10^{4}
^{149}Nd		0.6	16.2	0.5	13.5	1.1×10^{7}
^{59}Ni	Nickel(28)	40	1080	40	1080	8.11×10^{-2}
^{63}Ni		40	1080	30	811	4.6×10^{1}
^{65}Ni		0.3	8.11	0.3	8.11	1.9×10^{7}
^{235}Np	Neptunium(93)	40	1080	40	1080	1.4×10^{3}
^{236}Np		7	189	1×10^{-3}	2.70×10^{-2}	6.0×10^{5}
^{237}Np		2	54.1	0.5	13.5	6.9×10^{-4}
^{239}Np		6	162	0.5	13.5	2.3×10^{5}
^{185}Os	Osmium(76)	1	27.0	1	27.0	7.3×10^{-3}
^{191m}Os		40	1080	40	1080	1.2×10^{6}
^{191}Os		10	270	0.9	24.3	4.6×10^{4}
^{193}Os		0.6	16.2	0.5	13.5	5.3×10^{5}
^{194}Os		0.2	5.41	0.2	5.41	1.1×10^{2}
^{32}P	Phosphorus(15)	0.3	8.11	0.3	8.11	2.9×10^{5}
^{33}P		40	1080	0.9	24.3	1.6×10^{5}
^{230}Pa	Protactinium(91)	2	54.1	0.1	2.70	3.2×10^{4}
^{231}Pa		0.6	16.2	6×10^{-5}	1.62×10^{-3}	4.5×10^{-2}
^{233}Pa		5	135	0.9	24.3	2.1×10^{4}
^{201}Pb	Lead(82)	1	27.0	1	27.0	1.7×10^{6}
^{202}Pb		40	1080	2	54.1	5.9×20^{-3}
^{203}Pb		3	81.1	3	81.1	3.0×10^{5}
^{205}Pb		Unlimited	Unlimited	Unlimited	Unlimited	5.8×10^{-5}
^{210}Pb		0.6	16.2	9×10^{-3}	0.243	8.8×10^{1}
^{212}Pb		0.3	8.11	0.3	8.11	1.4×10^{6}
^{103}Pd	Palladium(46)	40	1080	40	1080	7.5×10^{4}
^{107}Pd		Unlimited	Unlimited	Unlimited	Unlimited	4.8×10^{-4}
^{109}Pd		0.6	16.2	0.5	13.5	2.1×10^{-4}
^{143}Pm	Promethium(61)	3	81.1	3	81.1	3.4×10^{3}
^{144}Pm		0.6	16.2	0.6	16.2	2.6×10^{3}
^{145}Pm		30	811	7	189	1.4×10^{2}
^{147}Pm		40	1080	0.9	24.3	9.4×10^{2}
^{148m}Pm		0.5	13.5	0.5	13.5	2.1×10^{4}
^{149}Pm		0.6	81.1	0.5	13.5	7.5×10^{5}
^{151}Pm		3	16.2	0.5	13.5	4.2×10^{5}
^{208}Po	Polonium(84)[3]	40	1080	2×10^{-2}	0.541	5.9×10^{2}

TABLE A-1 A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (Ci/g)
^{209}Po		40	1080	2×10^{-2}	0.541	1.7×10^{1}
^{210}Po		40	1080	2×10^{-2}	0.541	5.41×10^{3}
^{142}Pr	Praseodymium(59)	0.2	5.41	0.2	5.41	1.2×10^{4}
^{143}Pr		4	108	0.5	13.5	6.6×10^{4}
^{188}Pt	Platinum(78)	0.6	16.2	0.6	16.2	6.8×10^{4}
^{191}Pt		3	81.1	3	81.1	2.3×10^{5}
^{193m}Pt		40	1080	9	243	2.0×10^{5}
^{193}Pt		40	1080	40	1080	3.7
^{195m}Pt		10	270	2	54.1	1.6×10^{5}
^{197m}Pt		10	270	0.9	24.3	1.2×10^{7}
^{197}Pt		20	541	0.5	13.5	8.8×10^{5}
^{236}Pu	Plutonium(94)	7	189	7×10^{-4}	1.89×10^{-2}	5.3×10^{2}
^{237}Pu		20	541	20	541	1.2×10^{4}
^{238}Pu		2	54.1	2×10^{-4}	5.41×10^{-3}	1.7×10^{1}
^{239}Pu		2	54.1	2×10^{-4}	5.41×10^{3}	6.2×10^{-2}
^{240}Pu		2	54.1	2×10^{-4}	5.41×10^{-3}	2.3×10^{-1}
^{241}Pu		40	1080	1×10^{-2}	0.270	1.1×10^{2}
^{242}Pu		2	54.1	2×10^{-4}	$5.41-10^{-3}$	3.9×10^{-3}
^{244}Pu		0.3	8.11	2×10^{-4}	5.41×10^{-3}	1.9×10^{-5}
^{223}Ra	Radium(88)	0.6	16.2	3×10^{-2}	0.811	5.0×10^{4}
^{224}Ra		0.3	8.11	6×10^{-2}	1.62	1.6×10^{5}
^{225}Ra		0.6	16.2	2×10^{-2}	0.541	3.9×10^{-4}
^{226}Ra		0.3	8.11	2×10^{-2}	0.541	1.0
^{228}Ra		0.6	16.2	4×10^{-2}	1.08	2.3×10^{2}
^{81}Rb	Rubidium(37)	2	54.1	0.9	24.3	8.2×10^{-6}
^{83}Rb		2	54.1	2	54.1	1.9×10^{4}
^{84}Rb		1	27.0	0.9	24.3	4.7×10^{4}
^{86}Rb		0.3	8.11	0.3	8.11	8.11×10^{4}
^{87}Rb		Unlimited	Unlimited		Unlimited	6.6×10^{-8}
Rb (natural)		Unlimited	Unlimited		Unlimited	1.8×10^{-8}
^{183}Re	Rhenium(75)	5	135	5	135	1.0×10^{3}
^{184m}Re		3	81.1	3	81.1	4.2×10^{3}
^{184}Re		1	27.0	1	27.0	1.9×10^{4}
^{186}Re		4	108	0.5	13.5	1.9×10^{5}
^{187}Re		Unlimited	Unlimited		Unlimited	3.8×10^{-8}
^{188}Re		0.2	5.41	0.2	5.41	1.0×10^{6}
^{189}Re		4	108	0.5	13.5	4.9×10^{3}
Re (natural)		Unlimited	Unlimited		Unlimited	2.4×10^{-8}
^{99}Rh	Rhodium(45)	2	54.1	2	54.1	6.7×10^{6}
^{101}Rh		4	108	4	108	1.2×10^{3}
^{102m}Rh		2	54.1	0.9	24.3	1.2×10^{3}
^{102}Rh		0.5	13.5	0.5	13.5	6.2
^{103m}Rh		40	1080	40	1080	3.2×10^{7}
^{105}Rh		10	270	0.9	24.3	8.2×10^{5}
^{222}Rn	Radon(86)	0.2	5.41	4×10^{-3}	0.108	1.5×10^{5}
^{97}Ru	Ruthenium(44)	4	108	4	108	5.5×10^{5}
^{103}Ru		2	54.1	0.9	24.3	3.2×10^{4}
^{105}Ru		0.6	16.2	0.5	13.5	6.6×10^{6}
^{106}Ru		0.2	5.41	0.2	5.41	3.4×10^{3}
^{35}S	Sulfur(16)	40	1080	2	54.1	4.3×10^{4}
^{122}Sb	Antimony(51)	0.3	8.11	0.3	8.11	3.9×10^{5}
^{124}Sb		0.6	16.2	0.5	13.5	1.8×10^{4}
^{125}Sb		2	54.1	0.9	24.3	1.4×10^{3}
^{126}Sb		0.4	10.8	0.4	10.8	8.3×10^{4}
^{44}Sc	Scandium(21)	0.5	13.5	0.5	13.5	1.8×10^{7}
^{46}Sc		0.5	13.5	0.5	13.5	3.4×10^{4}
^{47}Sc		9	243	0.9	24.3	8.2×10^{5}
^{48}Sc		0.3	8.11	0.3	8.11	1.5×10^{6}
SCO	Surface Contaminated Object Definition (See § 71.4).					
^{75}Se	Selenium(34)	3	81.1	3	81.1	1.4×10^{4}
^{79}Se		40	1080	2	54.1	7.0×10^{-2}
^{31}Si	Silicon(14)	0.6	16.2	0.5	13.5	3.9×10^{7}
^{32}Si			1080	0.2	5.41	1.7×10^{1}
^{145}Sm	Samarium(62)	20	541	20	541	2.6×10^{3}
^{147}Sm	Unlimited	Unlimited	Unlimited		Unlimited	2.0×10^{-8}
^{151}Sm		40	1080	4	108	2.6×10^{1}
^{153}Sm		4	108	0.5	13.5	4.4×10^{5}

TABLE A–1 A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (Ci/g)
^{113}Sn	Tin(50)	4	108	4	108	1.0×10^{4}
^{117m}Sn		6	162	2	54.1	8.0×10^{4}
^{119m}Sn		40	1080	40	1080	4.4×10^{3}
^{121m}Sn		40	1080	0.9	24.3	3.9×10^{1}
^{123}Sn		0.6	16.2	0.5	13.5	8.5×10^{3}
^{125}Sn		0.2	5.41	0.2	5.41	1.1×10^{5}
^{126}Sn		0.3	8.11	0.3	8.11	2.8×10^{-2}
^{82}Sr	Strontium(38)	0.2	5.41	0.2	5.41	6.4×10^{4}
^{85m}Sr		5	135	5	135	3.2×10^{7}
^{85}Sr		2	54.1	2	54.1	2.4×10^{4}
^{87m}Sr		3	81.1	3	81.1	1.2×10^{7}
^{89}Sr		0.6	16.2	0.5	13.5	2.9×10^{4}
^{90}Sr		0.2	5.41	0.1	2.70	1.5×10^{2}
^{91}Sr		0.3	8.11	0.3	8.11	3.6×10^{6}
^{92}Sr		0.2	5.41	0.2	5.41	1.3×10^{7}
T	Tritium(1)	40	1080	[1] 40	[1] 1080	9.7×10^{3}
^{178}Ta	Tantalum(73)	1	27.0	1	27.0	1.1×10^{8}
^{179}Ta		30	811	30	811	1.2×10^{3}
^{182}Ta		0.8	21.6	0.5	13.5	6.2×10^{3}
^{157}Tb	Terbium(65)	40	1080	10.8	270	1.5×10^{1}
^{158}Tb		1	27.0	0.7	18.9	1.9
^{160}Tb		0.9	24.3	0.5	13.5	1.1×10^{4}
^{95m}Tc	Technetium(43)	2	54.1	2	54.1	2.2×10^{4}
^{96m}Tc		0.4	10.8	0.4	10.8	3.8×10^{7}
^{96}Tc		0.4	10.8	0.4	10.8	3.2×10^{5}
^{97m}Tc		40	1080	40	1080	1.5×10^{4}
^{97}Tc		Unlimited	Unlimited		Unlimited	1.4×10^{-3}
^{98}Tc		0.7	18.9	07	18.9	2.4×10^{-3}
^{99m}Tc		8	216	8	216	5.2×10^{6}
^{99}Tc		40	1080	0.9	24.3	1.7×10^{-2}
^{118}Te	Tellurium(52)	0.2	5.41	0.2	5.41	1.8×10^{5}
^{121m}Te		5	135	5	135	7.0×10^{3}
^{121}Te		2	54.1	2	54.1	6.3×10^{4}
^{123m}Te		7	189	7	189	9.1×10^{3}
^{125m}Te		30	811	9	243	1.8×10^{4}
^{127m}Te		20	541	0.5	13.5	4.0×10^{4}
^{127}Te		20	541	0.5	13.5	2.6×10^{6}
^{129m}Te		0.6	16.2	0.5	13.5	2.5×10^{4}
^{129}Te		0.6	16.2	0.5	13.5	2.0×10^{7}
^{131m}Te		0.7	18.9	0.5	13.5	8.0×10^{5}
^{132}Te		0.4	10.8	0.4	10.8	3.1×10^{5}
^{227}Th	Thorium(90)	9	243	1×10^{-2}	0.270	3.2×10^{4}
^{228}Th		0.3	8.11	4×10^{-4}	1.08×10^{-2}	8.3×10^{2}
^{229}Th		0.3	8.11	3×10^{-5}	8.11×10^{-4}	2.1×10^{-1}
^{230}Th		2	54.1	2×10^{-4}	5.41×10^{-3}	1.9×10^{-2}
^{231}Th		40	1080	0.9	24.3	5.3×10^{5}
^{232}Th		Unlimited	Unlimited		Unlimited	1.1×10^{-7}
^{234}Th		0.2	5.41	0.2	5.41	2.3×10^{4}
Th (natural)		Unlimited	Unlimited		Unlimited	2.2×10^{-7}
^{44}Ti	Titanium(22)	0.5	13.5	0.2	5.41	1.7×10^{2}
^{200}Tl	Thallium(81.1)	0.8	21.6	0.8	21.6	5.8×10^{5}
^{201}Tl		10.8	270	10.8	270	2.2×10^{5}
^{202}Tl		2	54.1	2	54.1	5.41×10^{4}
^{204}Tl		4	108	0.5	13.5	4.3×10^{2}
^{167}Tm	Thulium(69)	7	189	7	189	8.11×10^{4}
^{168}Tm		0.8	21.6	0.8	21.6	9.1×10^{3}
^{170}Tm		4	108	0.5	13.5	6.0×10^{3}
^{171}Tm		40	1080	10.8	270	1.1×10^{3}
^{230}U	Uranium(92)	40	1080	1×10^{-2}	0.270	2.7×10^{4}
^{232}U		3	81.1	3×10^{-4}	8.11×10^{-3}	2.1×10^{1}
^{233}U		10.8	270	1×10^{-3}	2.70×10^{-2}	9.5×10^{-3}
^{234}U		10.8	270	1×10^{-3}	2.70×10^{-2}	6.2×10^{-3}
^{235}U	Unlimited		Unlimited		Unlimited	2.1×10^{-6}
^{236}U		10.8	270	1×10^{-3}	2.70×10^{-2}	6.3×10^{-5}
^{238}U	Unlimited		Unlimited	Unlimited	Unlimited	3.3×10^{-7}
U (natural)	Unlimited		Unlimited	Unlimited	Unlimited	7.1×10^{-7}
U (enriched 5% or less)	Unlimited	Unlimited	Unlimited	Unlimited	(see Table A–3).	

TABLE A-1 A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (Ci/g)
U (enriched more than 5%).		10.8	270	1×10^{-3}	2.70×10^{-2}	(see Table A-3)
U (depleted)	Unlimited		Unlimited		Unlimited	(see Table A-3)
^{48}V	Vanadium(23)	0.3	8.11	0.3	8.11	1.7×10^{5}
^{49}V		40	1080	40	1080	8.11×10^{3}
^{178}W	Tungsten(74)	1	27.0	1	27.0	3.4×10^{4}
^{181}W		30	811	30	811	5.0×10^{3}
^{185}W		40	1080	0.9	24.3	9.7×10^{-3}
^{187}W		2	54.1	0.5	13.5	7.0×10^{-5}
^{188}W		0.2	5.41	0.2	5.41	1.0×10^{4}
^{122}Xe	Xenon(54)	0.2	5.41	0.2	5.41	1.3×10^{6}
^{123}Xe		0.2	5.41	0.2	5.41	1.2×10^{7}
^{127}Xe		4	108	4	108	2.8×10^{4}
^{131m}Xe		40	1080	40	1080	1.0×10^{5}
^{133}Xe		20	541	20	541	1.9×10^{5}
^{135}Xe		4	108	4	108	2.5×10^{5}
^{87}Y	Yttrium(39)	2	54.1	2	54.1	4.5×10^{1}
^{88}Y		0.4	10.8	0.4	10.8	1.4×10^{4}
^{90}Y		0.2	5.41	0.2	5.41	2.5×10^{5}
^{91m}Y		2	54.1	2	54.1	4.1×10^{7}
^{91}Y		0.3	8.11	0.3	8.11	2.5×10^{4}
^{92}Y		0.2	5.41	0.2	5.41	9.5×10^{5}
^{93}Y		0.2	5.41	0.2	5.41	3.2×10^{6}
^{169}Yb	Ytterbium(70)	3	81.1	3	81.1	2.3×10^{5}
^{175}Yb		30	811	0.9	24.3	1.8×10^{5}
^{65}Zn	Zinc(30)	2	54.1	2	54.1	8.0×10^{3}
^{69m}Zn		2	54.1	0.5	13.5	3.3×10^{6}
^{69}Zn		4	108	0.5	13.5	5.3×10^{7}
^{88}Zr	Zirconium(40)	3	81.1	3	81.1	1.7×10^{4}
^{93}Zr		40	1080	0.2	5.41	3.5×10^{-3}
^{95}Zr		1	27.0	0.9	24.3	2.1×10^{4}
^{97}Zr		0.3	8.11	0.3	8.11	2.0×10^{6}

[1] Also, for liquids only, a concentration limit of not greater than 27.0 Ci/λ (1 TBq/λ).

TABLE A-2—GENERAL VALUES FOR A_1 AND A_2

Contents	A_1		A_2	
	(TBq)	(Ci)	(TBq)	(Ci)
Only beta or gamma emitting nuclides are known to be present	0.2	5	0.02	0.5
Alpha emitting nuclides are known to be present or no relevant data are available.	0.10	2.70	2×10^{-5}	5.41×10^{-4}

TABLE A-3—ACTIVITY-MASS RELATIONSHIPS FOR URANIUM/THORIUM

Thorium and Uranium Enrichment* wt % ^{235}U present	Specific Activity	
	Ci/g	g/Ci
0.45	5.0×10^{-7}	2.0×10^{6}
0.72	7.06×10^{-7}	1.42×10^{6}
1.0	7.6×10^{-7}	1.3×10^{6}
1.5	1.0×10^{-6}	1.0×10^{6}
5.0	2.7×10^{-6}	3.7×10^{5}
10.0	4.8×10^{-6}	2.1×10^{5}
20.0	1.0×10^{-5}	1.0×10^{5}
35.0	2.0×10^{-5}	5.0×10^{4}
50.0	2.5×10^{-5}	4.0×10^{4}
90.0	5.8×10^{-5}	1.7×10^{4}
93.0	7.0×10^{-5}	1.4×10^{4}
95.0	9.1×10^{-5}	1.1×10^{4}

TABLE A-3—ACTIVITY-MASS RELATIONSHIPS FOR URANIUM/THORIUM—Continued

Thorium and Uranium Enrichment* wt % ^{235}U present	Specific Activity	
	Ci/g	g/Ci
Natural Thorium	2.2×10^{-7}	4.6×10^{6}

*The figures for uranium include representative values for the activity of the uranium-234 which is concentrated during the enrichment process. The activity for Thorium includes the equilibrium concentration of Thorium-228.

Dated at Rockville, MD, this 23rd day of May 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88-12639 Filed 6-7-88; 8:45 am]

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Part III

Department of Justice

Antitrust Division

Antitrust Guidelines for International Operations; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

Antitrust Guidelines for International Operations

The Antitrust Division of the United States Department of Justice has drafted new Antitrust Guidelines for International Operations. The Guidelines are intended to advise the business community, the legal profession, and interested members of the public of the general legal and economic analysis undertaken by the Department in making prosecutorial decisions under the antitrust laws regarding international business conduct. The Department will apply the general analysis reflected in the Guidelines reasonably and flexibly to particular facts and circumstances. The Guidelines should not be understood to affect any other considerations relevant to the exercise of prosecutorial discretion by the Department of Justice.

The Guidelines are not intended to create or recognize any legally enforceable right in any person. They are not intended to affect the admissibility of evidence or in any other way necessarily to affect the course or conduct of litigation. Moreover, changes in the relevant statutory framework, legal precedent, and methods of internal Department analysis may occur over time. Because these changes will not always be simultaneously reflected in amendments to the Guidelines, the positions stated in the Guidelines should not be regarded as affecting any future action which may be appropriate under the antitrust laws. Parties seeking to know the Department's specific enforcement intentions with respect to any particular transaction should consider seeking a Business Review pursuant to 28 CFR 50.6.

The draft Guidelines are not subject to the notice and comment or the other requirements of the Administrative Procedure Act, but the Department welcomes the views of the business and legal communities and of the general public on all matters which are or might appropriately and beneficially be addressed in the Guidelines. Views should be submitted in writing by August 8, 1988, to Deborah A. Garza, Chief of Staff and Counselor to the Assistant Attorney General, Antitrust Division, Room 3114, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530, (202) 633–2452.

ANTITRUST GUIDELINES FOR INTERNATIONAL OPERATIONS

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Part I. Introduction

The U.S. antitrust laws represent the legal embodiment of our nation's commitment to a free market economy. The competitive process of the free market ensures the most efficient allocation of resources and the maximization of consumer welfare. Similarly, international markets unimpeded by private and governmentally imposed barriers to trade ensure the production of goods based on the comparative advantages of all producers.

The Department of Justice (the "Department") focuses its antitrust enforcement efforts on anticompetitive conduct that affects U.S. consumer welfare. To be effective, of course, U.S. antitrust enforcement must reach some conduct that occurs outside the United States and that involves foreign actors. For example, an international cartel of private producers cannot impose higher prices on U.S. consumers with impunity simply by holding its cartel meetings outside the United States. On the other hand, U.S. antitrust enforcement does not reach conduct that has only a remote effect on U.S. consumer welfare. To justify the exercise of the Department's enforcement authority, conduct must have a direct, substantial, and reasonably foreseeable anticompetitive effect on U.S. commerce. In addition, in some cases, considerations of international comity may require the Department to consider the significant interests of other nations that may also have jurisdiction over transnational conduct in determining whether to challenge that conduct.

These Guidelines are intended to provide practical guidance concerning the Department's internal antitrust enforcement policies and procedures as they apply in a variety of international contexts. The remainder of Part I of these Guidelines describes the most relevant applicable antitrust laws enforced by the Department; the legal and economic analysis the Department employs in assessing certain types of business conduct under those laws for enforcement purposes; the jurisdictional rules that govern the Department's enforcement policy; considerations of international comity that may affect the Department's discretion in asserting jurisdiction in a particular case; circumstances under which the existence of foreign sovereign compulsion may lead the Department not to prosecute anticompetitive conduct; and the analysis the Department employs in assessing certain antitrust issues that may arise in the context of international "trade frictions" or disputes under the U.S. trade laws. Part II of these Guidelines consists of seventeen hypothetical cases that illustrate the enforcement policies described in Part I.

These Guidelines are intended only to provide general guidance as to how the Department analyzes certain commonly occurring issues affecting its own enforcement decisions. Several important caveats therefore apply to use of the Guidelines. First, these Guidelines should not be taken as expressing any view regarding the applicability of the

laws of other nations.[1] American businesses engaged in or contemplating transactions with foreign partners or activities abroad should consider the applicability of foreign laws relating to business activities affecting commerce in those nations. Second, these Guidelines are not intended to substitute for the advice of experienced private antitrust counsel or for formal guidance under the Department's Business Review procedure.[2] Third, although the Department believes that the analysis stated in these Guidelines is economically and legally correct and consistent with the trend in the courts, these Guidelines are not intended to be a restatement of the law. In addition, readers should also separately evaluate the risk of private litigation by competitors, consumers, and suppliers, as well as the risk of enforcement by state prosecutors under state and federal antitrust laws.

A. Applicable Antitrust Laws Enforced by the Department

The following is a brief summary of antitrust laws enforced by the Department that are likely to have the greatest significance in planning international business transactions.[3]

1. Sherman Act

Section 1 of the Sherman Act sets forth the basic antitrust prohibition against contracts, combinations, or conspiracies "in restraint of trade or commerce among the several States, or with foreign nations." [4] Section 2 of the Sherman Act prohibits monopolization, attempts to monopolize, and conspiracies to monopolize "any part of trade or commerce among the several States, or with foreign nations." [5] Section 6a defines the jurisdictional reach of the Sherman Act with respect to non-import foreign commerce.[6]

Violations of the Sherman Act may be prosecuted as civil or criminal violations, depending on the circumstances.[7] Criminal violations of the Sherman Act are punishable by fines and imprisonment. The Sherman Act provides that corporate defendants may be fined up to $1 million and individual defendants may be fined up to $100,000 and sentenced to up to three years of imprisonment. Under the Criminal Fine Enforcement Act of 1984 [8] and the Sentencing Reform Act of 1984,[9] however, for felony violations continuing or committed after December 31, 1984, a corporate defendant may be fined up to $1 million, twice the gross pecuniary loss by victims, or twice the corporation's gross pecuniary gain from the violation, whichever is greatest. An individual defendant may be fined up to $250,000, twice the gross pecuniary loss by victims, or twice the defendant's gross pecuniary gain from the violation, whichever is greatest.[10] For antitrust felony violations committed or continuing on or after November 1, 1987, the U.S. Sentencing Commission's Sentencing Guidelines [11] require convicted corporate defendants to be fined a minimum of $100,000 and require convicted individuals to be fined a minimum of $20,000. The Sentencing Guidelines also generally require individuals to serve a minimum of four months in jail (with probationary provisions).[12] In a civil proceeding, the Department may obtain injunctive relief [13] or actual damages for injury incurred by the U.S. government as the purchaser of goods or services as a result of a violation.[14]

2. Clayton Act

Section 7 of the Clayton Act expands on the general prohibitions of the Sherman Act by prohibiting any merger or acquisition "where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." [15] Section 15 of the Clayton Act empowers the Attorney General to seek a court injunction preventing consummation of a merger that would violate section 7.[16]

3. Hart-Scott-Rodino Act

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("H–S–R Act") [17] added section 7A to the Clayton Act to provide the Department and the FTC with several procedural devices to facilitate enforcement of the antitrust laws with respect to anticompetitive mergers and acquisitions. The H–S–R Act requires businesses to notify the Department and the FTC of proposed mergers or acquisitions that would exceed certain size-of-parties and size-of-transaction thresholds,[18] provide certain information relating to reportable transactions,[19] and wait for a prescribed period—15 days for cash tender offers and 30 days for all other transactions—before consummating the

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[1] The U.S. government is a party to voluntary guidelines that discourage participation by international business enterprises (including U.S. businesses) in anticompetitive trade practices. *See* Code of Conduct for Multinational Enterprises adopted by the Council of the Organization for Economic Cooperation and Development (June 1976). The United States is also committed to a program of cooperation with foreign competition authorities, including joint efforts to improve the enforcement efforts of each participating nation under its own law. *See, e.g.*, Revised Recommendation of the [OECD] Council Concerning Cooperation Between Member Countries in Restrictive Business Practices Affecting International Trade, OECD Document C (86) 44 (Final) (May 21, 1986); Agreement Relating to Bilateral Cooperation Regarding Restrictive Business Practices, June 23, 1976, United States-Federal Republic of Germany, 27 UST 1956, TIAS No. 8291, *reprinted in* [1969–1983 Transfer Binder] Trade Reg. Rep. ¶ 50,283; Agreement Relating to Cooperation on Antitrust Matters, June 29, 1982, United States-Australia, TIAS No. 10365, *reprinted in* [1969–1983 Transfer Binder] Trade Reg. Rep. 50,440; Memorandum of Understanding as to Notification, Consultation and Cooperation with Respect to the Application of National Antitrust Laws, Mar. 9, 1984, United States-Canada, *reprinted in* 5 Trade Reg. Rep. ¶ 50,464. In addition, the Justice Department has been and will continue to be engaged in efforts to achieve international liberalization of trade policies where legitimate public goals can be served through less restrictive measures.

[2] 28 CFR 50.6.

[3] The Federal Trade Commission ("FTC") may also proceed in a civil action under section 5 of the Federal Trade Commission Act ("FTC Act") (15 U.S.C. 41–57c) against conduct that violates the Sherman and Clayton Acts. The FTC also has exclusive authority to enforce the FTC Act's prohibition against "unfair methods of competition" and "unfair or deceptive acts or practices." 15 U.S.C. 45. In addition, historically, the FTC, rather than the Department, has enforced the Robinson-Patman Act, 15 U.S.C. 13–13c, 21. Only the Department, however, is authorized to prosecute criminal violations of the antitrust laws.

[4] 15 U.S.C. 1 (1982). The Wilson Tariff Act, 15 U.S.C. 8–11 (1982), which essentially parallels and is coextensive with section 1 of the Sherman Act, specifically prohibits conspiracies in restraint of U.S. import trade.

[5] 15 U.S.C. 2 (1982).

[6] 15 U.S.C. 7 (1982). *See* discussion at I.C.1., *infra*

[7] *See* discussion at I.B.1., *infra*, concerning when conduct that violates the Sherman Act will be subject to criminal prosecution by the Department.

[8] Pub. L. 98–596, 18 U.S.C. 3623 (repealed eff. Nov. 1, 1987, by the Comprehensive Crime Control Act of 1984, Pub. L. 98–473, section 235(a)(1)).

[9] Chapter II of the Comprehensive Crime Control Act of 1984, Pub. L. 98–473, as amended by the Criminal Fine Improvements Act of 1987, Pub. L. 100 185, section 6, 18 U.S.C. 3571.

[10] The Criminal Fine Enforcement Act governs crimes continuing or committed after December 31, 1984, but before November 1, 1987. (Although 18 U.S.C. 3623 was repealed by the Sentencing Reform Act as of November 1, 1987, it continues to govern fines for offenses continuing or committed between January 1, 1985 and October 31, 1987.) The Sentencing Reform Act governs crimes continuing or committed on or after November 1, 1987. The Criminal Fine Improvements Act, which amended 18 U.S.C. 3571 to include alternative fines of twice the gain or twice the loss, was approved on December 11, 1987.

[11] Sentencing Guidelines and Policy Statement, United States Sentencing Commission (April 13, 1987).

[12] *See* Sentencing Guidelines and Policy Statement, United States Sentencing Commission section 2R1.1 (April 13, 1987).

[13] 15 U.S.C. 4 (1982).

[14] 15 U.S.C. 15a (1982).

[15] 15 U.S.C. 7.

[16] 15 U.S.C. 25.

[17] 15 U.S.C. 18a.

[18] 15 U.S.C. 18a(a).

[19] 15 U.S.C. 18a (a), (d); 16 CFR 803.1 (1987).

transaction.[20] The Department or the FTC may request additional information concerning a transaction and thereby extend the waiting period by 10 days beyond the receipt of the requested information for cash tender offers and 20 days beyond receipt of the requested information for all other transactions.[21]

The H–S–R Act and the FTC rules implementing the H–S–R Act exempt from the premerger notification requirements certain international transactions—typically those having little nexus to U.S. commerce—that otherwise meet the thresholds set forth in the Act.[22] Failure substantially to comply with the H–S–R Act is punishable by civil penalties of up to $10,000 for each day a violation continues.[23] Injunctive relief may also be obtained to remedy a failure to comply with the H–S–R Act.[24] Businesses may seek an interpretation of their obligations under the H–S–R Act from the FTC pursuant to regulations set forth at 16 CFR 803.30 (1987).

4. National Cooperative Research Act of 1984

The National Cooperative Research Act of 1984 ("NCRA") [25] clarifies substantive application of the U.S. antitrust laws to joint research and development ("R&D") activities. The NCRA requires U.S. courts to judge the competitive effects of joint R&D in properly defined, relevant technology markets under a rule-of-reason standard that balances the procompetitive benefits of joint R&D against any potential anticompetitive effects.[26] The NCRA also limits the monetary relief that may be obtained in civil suits against participants in joint R&D to actual, rather than treble, damages where the challenged conduct is within the scope of notification filed by the joint R&D venture with the Attorney General and the FTC.[27]

5. Webb-Pomerene Act

The Webb-Pomerene Act [28] provides an antitrust exemption for the formation and operation of associations of otherwise competing businesses to engage in collective export sales. The exemption applies only to the export of "goods, wares, or merchandise." [29] It does not apply to conduct that would have an anticompetitive effect in the United States or that injures domestic competitors of members of an export association.[30] Associations seeking an exemption under the Webb-Pomerene Act must file their articles of agreement and annual reports with the FTC, but pre-formation approval from the FTC is not required.[31]

6. Export Trading Company Act of 1982

Title III of the Export Trading Company Act of 1982 (the "ETC Act") [32] enables any person engaged in U.S. export trade to obtain an export trade certificate of review. Such a certificate confers immunity from suit under state and federal antitrust laws for activities that are specified in and comply with the certificate. The Secretary of Commerce issues the certificate with the concurrence of the Attorney General. To obtain a certificate, an applicant must show that proposed export conduct:

(1) Will result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

(2) Will not unreasonably enhance, stabilize, or depress prices in the United States of the class of goods or services covered by the application;

(3) Will not constitute unfair methods of competition against competitors engaged in the export of the class of goods or services exported by the applicant; and

(4) Will not include any act that may reasonably be expected to result in the sale for consumption or resale in the United States of such goods or services.[33]

Although an export trade certificate of review provides significant protection under the antitrust laws, it has important limitations. A certificate provides no protection to persons that are not identified as an applicant or as a member of an applicant. Conduct that falls outside the scope of a certificate or that violates the terms of the certificate remains fully subject to criminal sanctions as well as to private and governmental civil enforcement actions. A certificate that is obtained by fraud is void from the outset and thus offers no protection under the antitrust laws. And, finally, a certificate confers no protection from prosecution under foreign laws.

The Secretary of Commerce may revoke or modify a certificate if the Secretary or the Attorney General determines that the applicants' export activities have ceased to comply with the four statutory criteria described above.[34] The Attorney General may also bring suit under section 15 of the Clayton Act "to enjoin conduct threatening a clear and irreparable harm to the national interest." [35] In addition, the ETC Act creates a private cause of action for injunctive relief and actual damages for individuals injured by export conduct that does not comply with the statutory criteria.[36] In any such private action, certificated conduct is presumed to be valid.[37] The prevailing party is entitled to costs and attorneys' fees.[38]

The Commerce Department, in consultation with the Justice Department, has issued guidelines setting forth the standards for reviewing applications for export trade certificates of review.[39] Those guidelines contain several examples illustrating application of the certification standards to specific conduct in export trade, including vertical restraints, horizontal restraints, and technology licensing arrangements.

B. Enforcement Policy

The Department focuses its antitrust enforcement efforts against private restraints of trade that reduce U.S. consumer welfare by artificially restricting output and/or raising prices. The Department is not concerned with conduct that solely affects competition in foreign markets and could have no direct, substantial, and reasonably foreseeable effect on competition and consumers in the United States. Nor is the Department concerned with the export conduct of U.S. firms except where that conduct has a direct, substantial, and reasonably foreseeable anticompetitive effect on price and/or

[20] 15 U.S.C. 18a(b).

[21] 15 U.S.C. 18a(e).

[22] 16 CFR 801.1(e), 801.1(k), 802.50–802.52. Case 4 illustrates when a merger between two foreign firms engaged in commerce in the United States would be subject to the premerger notification requirements of the H–S–R Act. With respect to transactions to which the H–S–R Act premerger notification requirements do not apply, the Department may request parties voluntarily to provide information concerning the transaction, or may issue Civil Investigative Demands ("CIDs").

[23] 15 U.S.C. 18a(g)(1).

[24] 15 U.S.C. 18a(g)(2).

[25] 15 U.S.C. 4301–4305.

[26] 15 U.S.C. 4302.

[27] 15 U.S.C. 4303(a).

[28] 15 U.S.C. 61–65.

[29] 15 U.S.C. 61.

[30] 15 U.S.C. 62.

[31] 15 U.S.C. 65.

[32] 15 U.S.C. 4011–4021.

[33] *See* 15 U.S.C. 4013(a).

[34] 15 U.S.C. 4014(b)(2).

[35] 15 U.S.C. 4016(b)(5).

[36] 15 U.S.C. 4016(b)(1).

[37] 15 U.S.C. 4016(b)(3).

[38] 15 U.S.C. 4016(b)(1), (b)(4).

[39] *See* Department of Commerce, International Trade Administration, Guidelines for the Issuance of Export Trade Certificates of Review (2d ed.), 50 FR 1786 (Jan. 11, 1985) (hereinafter cited as "ETC Guidelines").

output in the United States [40] or where the U.S. government is the purchaser, or substantially funds the purchase, of affected goods or services.[41]

Unlike many of the legal rules businesses encounter in their international dealings, the U.S. antitrust laws do not provide a checklist of detailed regulatory requirements. Instead, they establish competitive principles that have served as the basis for a system of flexible court-made rules governing the competitive activities of businesses affecting U.S. commerce.[42] Certain well-developed principles and rules, discussed and illustrated in these Guidelines, have evolved to guide business conduct under those laws.

Despite the literal terms of section 1 of the Sherman Act, which condemns "[e]very contract [or] combination * * * in restraint of trade," it has long been recognized that section l prohibits only unreasonable restraints of trade. Almost all productive activity involves cooperation among persons and firms and some ancillary restrictions affecting their independent commercial decision-making that literally can be said to restrain trade. The courts, however, have recognized that cooperative activity more often than not increases productive efficiency and therefore benefits consumer welfare.[43] The Department views as "unreasonable" (and therefore illegal under section 1) only restraints of trade that would create or facilitate the exercise of market power—that is, the power significantly to restrict output and/or to raise (or depress) price in a relevant market for a nontransitory period of time—where the risk of anticompetitive behavior is not outweighed by efficiencies that would bring about a net increase in consumer welfare.[44]

"Naked" restraints of trade which have no significant economic potential other than to restrict price and/or output in a market are so inherently anticompetitive that they are conclusively presumed to be unreasonable. They are therefore condemned under the antitrust laws without inquiry into the precise harm they have caused.[45] The most common examples of such naked restraints are price-fixing and bid-rigging schemes among competitors. Such restraints are often prosecuted as criminal violations under the Sherman Act.[46]

On the other hand, conduct that is plausibly related to some economic integration of the parties' operations (beyond simply the coordination of price and/or output) that may result in increased production—conduct such as joint ventures for production or R&D, vertical nonprice distribution arrangements, and intellectual property licensing arrangements—is analyzed on a case-by-case basis under a "rule-of-reason" standard.[47] The Department essentially asks two questions under a rule-of-reason analysis. First, would the restraint reduce competition in a relevant market by creating or facilitating the exercise of market power—that is, the power to restrict output and/or raise (or depress) price? A number of market conditions are relevant to answering this question. For example, if there are many competitors that are not parties to the restraint, or if entry into the relevant market is easy, then any attempt to exercise market power by the parties to the restraint would be frustrated by competition from existing or new competitors. Second, would any risk of an anticompetitive effect be offset by significant efficiency benefits that would result from integrating the parties' operations (by contract or otherwise) and that would bring about a net increase in consumer welfare? [48] If it would, then the net effect of the restraint would not be anticompetitive, and the restraint would not be unlawful.

An arrangement need not be procompetitive to be lawful, however. The antitrust laws condemn only anticompetitive conduct; competitively neutral conduct is beyond their proscriptive force. Thus, the Department generally examines the procompetitive justifications for particular conduct only if a preliminary economic analysis indicates that the conduct would likely create or facilitate the exercise of market power; if it would not, then there is no need to identify and weigh the procompetitive benefits of the conduct or to determine whether there is a less restrictive way to achieve those benefits.

The following is a brief description of the Department's basic method of analyzing the competitive effects of five types of conduct: criminal violations of the Sherman Act; mergers; joint ventures; vertical nonprice distribution

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[40] Under special circumstances, the export conduct of U.S. firms conceivably could have such an effect—for example, where domestic competitors accounting for a substantial share of a market in which entry by new firms would be difficult and in which total supply (for both foreign and domestic markets) is fixed (or very inelastic) agreed on the level of their exports in order to reduce supply and raise prices in the United States. Such an effect might also result if conduct that ostensibly involves exports is actually designed to affect the price of products that are to be resold in the United States.

[41] Where the U.S. government substantially funds the purchase of goods and services by a foreign government, the effect of anticompetitive conduct with respect to the sale of those goods or services falls not only on the foreign government which is the nominal purchaser, but also (and primarily) on American taxpayers who are the consumers of the philanthropic benefits of the funding and who are deprived of the benefits of competition guaranteed by the federal antitrust laws. *See, e.g.*, United States v. Standard Tallow Corp., 1988-1 Trade Cas. (CCH) ¶ 67,913 (S.D.N.Y. 1988) (consent decree) (barring suppliers from fixing prices or rigging bids for the sale of tallow financed in whole or in part through grants or loans by the U.S. government); United States v. Concentrated Phosphate Export Ass'n, 393 U.S. 199 (1968); United States v. Anthracite Export Ass'n, Civ. No. 9171 (M.D. Pa. Nov. 12, 1970) (consent decree).

[42] "The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions. But even when the premise is open to question, the policy unequivocally laid down by the Act is Competition." Northern Pacific R. Co. v. United States, 356 U.S. 1, 4–5 (1958).

[43] *See, e.g.*, Business Electronics Corp. v. Sharp Electronics Corp., No. 85–1910, 56 U.S.L.W. 4387 (U.S. May 2, 1988) (hereinafter cited as "Sharp").

[44] When a firm or a combination of firms is able artificially to restrict output and maintain price above a competitive level, the result is a transfer of wealth from buyers to sellers and a misallocation of society's resources. The exercise of market power by buyers has wealth transfer and resource misallocation effects analogous to those associated with the exercise of market power by sellers.

[45] *See, e.g.*, Broadcast Music, Inc. v. Columbia Broadcasting System, Inc., 441 U.S. 1, 19–20 (1979) (in characterizing conduct under the per se rule, inquiry must focus on whether the effect and purpose of a practice "are to threaten the proper operation of our predominantly free-market economy—that is, whether the practice facially appears to be one that would always or almost always tend to restrict competition and decrease output, * * * or instead one designed to 'increase economic efficiency and render markets more, rather than less, competitive' "), *citing* United States v. United States Gypsum, 438 U.S. 422, 441 n.16 (1978); National Collegiate Athletic Ass'n v. Board of Regents of University of Oklahoma, 468 U.S. 85, 103–04 (1984) ("Per se rules are invoked when the surrounding circumstances make the likelihood of anticompetitive conduct so great as to render unjustified further examination of the challenged conduct.").

[46] *See* discussion at I.B.1, *infra*.

[47] *See, e.g.*, National Society of Professional Engineers v. United States, 435 U.S. 679, 692 (1978); Broadcast Music, Inc. v. Columbia Broadcasting System, Inc, *supra* n.45; National Collegiate Athletic Ass'n v. Board of Regents of University of Oklahoma, *supra* n.45; Northwest Wholesale Stationers, Inc. v. Pacific Stationary & Printing Co., 472 U.S. 284, 289–90 (1985); FTC v. Indiana Federation of Dentists, 476 U.S. 447, 458–59 (1986); Sharp, *supra* n.43.

[48] Such efficiencies typically result if the parties possess complementary skills and assets or if the arrangement would allow them to take advantage of significant economies of scale or scope in production, distribution, or research. Cognizable efficiencies are those that would enable the parties to produce greater output at the same or less cost, or to produce new products or services or undertake R&D that would not be produced or undertaken without such cooperation.

arrangements; and intellectual property licensing arrangements.

1. Criminal Offenses Under the Sherman Act

A "naked" agreement (or common plan) between or among competitors to restrict output and/or raise (or depress) price, which is per se unlawful,[49] is prosecuted as a criminal violation of the Sherman Act.[50] An agreement is "naked" if its sole purpose and effect is to restrict output and/or raise (or depress) price—that is, if it is not plausibly related to some economic integration of the parties' operations (beyond simply the coordination of price and/or output) that may result in increased production. The most common examples of such agreements are price-fixing and bid-rigging schemes among competitors. Criminal prosecution of such agreements is particularly appropriate because of their unambiguously anticompetitive effect, the difficulty of detecting such agreements (which usually are covert), and the fact that the conspirators usually know (or should know) that their conduct is unlawful.[51]

Neither an express agreement nor overt acts pursuant to an agreement are necessary to make out a violation of section 1. Nor is it necessary that a particular agreement be successful, or that it has an actual, demonstrable anticompetitive effect; all that is necessary is a "meeting of the minds."

To constitute unlawful "price-fixing," it is not necessary that conspirators agree to charge exactly the same price for a product or service. For example, agreements among competitors to raise their individual prices by a specified amount, to maintain a specified profit margin, to adopt a standard formula for computing price, or to notify one another before reducing price may also violate section 1 of the Sherman Act.

It is no justification for a naked price or output restricting agreement that competition is too rigorous, that prices are "unreasonably low," or that some firms may exit the market in the absence of such an agreement. Under our free-market system, the unencumbered forces of competition allocate society's scarce resources by motivating firms to satisfy the demands of consumers as efficiently as possible. Those firms that are unsuccessful in responding to the market may fail, but their exit from the market will free resources to be invested by more efficient firms or in areas of the economy where they are more highly valued by society. In this way, consumers (including consuming industries) benefit from the highest quality and variety of products and services at the lowest cost.

The Department's analysis of international price and output agreements among competitors and various substantive and jurisdictional issues that typically arise with respect to such agreements is illustrated in Case 14 (International Cartel Activity), Case 16 (Voluntary Export Restraint), and Case 17 (Settling a Trade Case).

2. Mergers

As a general matter, the Department recognizes that mergers and acquisitions play a crucial, beneficial role in our economy. They can discipline ineffective management and facilitate the movement of investment capital and productive assets through the economy to more highly valued uses. They may also enable industries to undertake restructuring necessary to remain competitive in changing markets, allow the realization of significant joint-operating efficiencies, and enable the combined firm to provide new products or better products than either firm could provide separately. Mergers are anticompetitive only when they would enable firms that remain in the market following the merger unilaterally or jointly to exercise market power.

The standards and principles the Department applies in analyzing mergers are set forth in detail in the Department's Merger Guidelines.[52] As stated in the Merger Guidelines, the goal of the Department's merger enforcement policy is to prohibit those mergers that would create, enhance, or facilitate the exercise of market power in the United States.[53] Where only a few firms account for most of the sales of a product or service for which there are no good substitutes, those firms might be able tacitly or explicitly to coordinate their actions to restrict output and raise price. Other things being equal, where collusion among firms is necessary to exercise market power, such collusion is more likely to occur and be successful among a small group of firms in a highly concentrated market. Reaching and enforcing agreement concerning output or price would be difficult and costly—and would be more likely to be detected by criminal prosecutors—if many firms would have to be included to make collusion successful. Therefore, a merger that would reduce the number of sellers of a product or service in a geographic market to only a few might substantially lessen competition unless other factors, such as the threat of entry by new sellers, would frustrate the exercise of market power.[54]

Market Definition. The first step in the Department's merger analysis is to identify the relevant market or markets that would be affected by the merger and the firms that compete in that market or those markets.[55] The Merger Guidelines provide a paradigm for defining the relevant product and geographic markets that is based on analysis of the likely demand response of consumers and supply response of suppliers to an anticompetitive price increase.[56] The result of applying this

[49] *See* nn.45–46 and accompanying text, *supra*.

[50] Some section 2 violations, for example, those involving physical violence against a competitor, may also be prosecuted as criminal violations.

[51] The Department traditionally has prosecuted criminally conduct possessing four characteristics: (1) (except for monopolization involving physical violence) the conduct involves agreements among competitors; (2) the agreements have as their inherent likely effect the raising (or in the case of monopsony, the lowering) of price and restricting of output (2A) without the promise of any significant integrative efficiencies; (3) the agreement or plan is generally covert and fraudulent; and (4) the conspirators generally are aware of the probable anticompetitive consequences of their conduct. *See* "Criminal Enforcement of the Antitrust Laws: Targeting Naked Cartel Restraints," Remarks of Charles F. Rule, Assistant Attorney General, Antitrust Division, Department of Justice, before the 36th Annual ABA Antitrust Section Spring Meeting, March 24, 1988. These characteristics are not, however, legal constraints on the cases that may be prosecuted criminally. Id.

In addition to prosecution under the Sherman Act, in appropriate circumstances, naked horizontal agreements may also be prosecuted under a wide variety of other federal statutes, including statutes prohibiting mail and wire fraud (18 U.S.C. 1341, 1343); conspiracy to defraud the government (18 U.S.C. 371); making false statements to a government agency (18 U.S.C. 1001); tax offenses (26 U.S.C. 7201); and the Racketeer Influenced and Corrupt Organization ("RICO") law (18 U.S.C. 1962(c)). In addition to fines and incarceration, the Department may, in appropriate cases, also seek to obtain injunctive relief, actual damages under the Clayton Act (15 U.S.C. 15a), and civil penalties up to treble damages under the False Claims Act (31 U.S.C. 3729).

[52] U.S. Department of Justice Merger Guidelines (June 14, 1984) (hereinafter cited as "Merger Guidelines"), *reprinted in* 2 Trade Reg. Rep. (CCH) ¶¶ 4491–95.

[53] Merger Guidelines section 1.

[54] *See id.* The ease and profitability of collusion is less relevant where a merger involves an acquisition by a single dominant firm (a firm that has a market share of at least 35 percent) of another firm in the market. In that case, the dominant firm might itself be able to exercise market power by restricting its own output and raising price. The Department is likely to challenge a merger between any firm with a market share of at least one percent and a dominant firm unless changing market conditions (Merger Guidelines section 3.21), the financial condition of the firm (*id.* at section 3.22), ease of entry into the market (*id.* at section 3.3), and significant efficiencies that are likely to result from the merger (*id.* at section 3.5) indicate that the merger would not be anticompetitive (*id.* at section 3.12).

[55] *Id.* at section 2.

[56] *Id.* at section 2.1 (product market definition) and section 2.3 (geographic market definition).

paradigm is to identify a group of products (the "product market") and a geographic area (the "geographic market") with respect to which sellers could exercise market power if they were able to coordinate their actions so as to act like a monopolist. Stated another way, market definition identifies which sellers would have to coordinate their pricing and/or output decisions to exercise market power. Market definition is illustrated in Case 1 of these Guidelines.

Analysis of Relevant Competitive Factors. If merging firms compete in the same product and geographic market, the Department next determines whether the elimination of competition between them is likely to create or facilitate the exercise of market power. To make this determination, the Department focuses first on the level of concentration in the market that would exist after the merger and the increase in concentration that would be caused by the merger.[57] If market concentration would remain low after the merger, or if concentration would increase only slightly, the Department would conclude without detailed examination of other factors that the merger poses no significant threat to competition.[58] In other cases, however, the Department would proceed to examine all other relevant factors bearing on whether the merger would likely result in the ability to restrict output and/or raise price.

The Department considers a number of factors that may indicate that a firm's current market share either overstates or understates its competitive significance. One such factor is recent or ongoing changes in market conditions. For example, if a technology that is important to long-term competititve viability is not available to a particular firm, the Department may conclude that the historical market share of that firm overstates its future competitive significance. The Department will consider the reasonably predictable effects of changes in market conditions in interpreting market concentration and market share data.[59] The Department will also consider special factors affecting the competitive significance of foreign firms, such as government restrictions on imports or exports.[60] The way the Department treats trade restraints in analyzing the likely competitive effects of a merger is discussed in greater detail below and illustrated in Case 2.

In addition to factors that affect the future competitive significance of individual firms, the Department also considers the likelihood and scope of substantial new entry into the relevant market,[61] the likelihood of expansion by fringe firms,[62] and other factors (such as heterogeneity of the relevant product and historical market performance) that may affect the ease and profitability of collusion in the relevant market.[63] If entry into the relevant market is so easy that existing competitors could not successfully raise price for any significant period of time, the Department is unlikely to challenge a merger in that market.[64] For this purpose, the time it would take to enter the relevant market at a minimally efficient scale of operation and the level of expected entry in response to a price increase are at least as important as the fact that entry can occur. Entry may be hindered, for example, by the need for scarce or specialized resources, the need to achieve a substantial share of the market in order to realize important economies of scale, or stagnation or decline in the relevant market that would make new entry unlikely to occur.[65] As the difficulty of entry into the market increases, so does the likelihood that the Department will challenge a merger that would result in a high degree of concentration in the relevant market.[66]

The Department also generally will not challenge a merger if the parties can establish by clear and convincing evidence that the merger would result in significant net efficiencies that could not be achieved except through the merger and that the merger would therefore likely result in a net benefit to consumer welfare.[67] The parties must establish a proportionately greater level of expected net efficiencies as the competitive risks of the merger increase.[68]

Foreign Competition. Nothing in the U.S. antitrust laws restricts foreign investment in the United States on the basis of the national origin of the investment. The Department's antitrust enforcement policy therefore does not discriminate against or in favor of firms on the basis of citizenship; the Department is concerned solely with the competitive effects of a transaction.

The existence of foreign competition is, however, relevant to the Department's analysis of any merger, whether or not one of the parties is foreign. Competition by foreign firms that are not involved in a merger may make the exercise of market power in the United States following a merger impossible if those firms would likely increase their sales in the United States significantly in response to a significant and nontransitory price increase.

On the other hand, constraints on foreign supply, such as U.S. import quotas and foreign export restraints, may prevent or limit a response by foreign producers to an anticompetitive price increase in the United States. Existing foreign competitors are not excluded from a relevant market solely because their sales in the United States are subject to such restrictions. Nevertheless, any such constraint on the ability of foreign firms to respond to a price increase—and thus to frustrate an attempt to exercise market power in the United States—is an important competitive fact that the Department considers in assigning market shares and in interpreting the significance of market shares and market concentration data.

Thus, while the Department's analysis under the Merger Guidelines expressly recognizes the significant competitive

[57] To assist in interpreting market data, the Department uses the Herfindahl-Hirschman Index ("HHI") of concentration. The HHI is calculated by summing the squares of the market shares of individual firms in the market. The HHI gives proportionately greater weight to larger firms to reflect their relative importance in collusive interaction. Merger Guidelines at section 3.1.

[58] The Department divides the spectrum of market concentration as measured by the HHI (which ranges from near zero in an atomistic market to 10,000 in the case of a pure monopoly) into three regions that can be broadly characterized as unconcentrated (post-merger HHI below 1000), moderately concentrated (post-merger HHI between 1000 and 1800), and highly concentrated (post-merger HHI above 1800). Merger Guidelines section 3.1. Mergers that would result in an HHI of less than 1000 are not challenged because the structure of the market itself indicates that the successful exercise of market power by one or more firms is unlikely. The Department also would not challenge a merger that resulted in moderate concentration if the level of concentration would increase by 100 HHI points or less, or a merger that resulted in high concentration if the level of concentration would increase by 50 HHI points or less. In those cases, the merger would not significantly increase concentration in the market. These regions of the HHI are thus "safe harbors." *Id.* at section 3.11. *But see* n. 54, *supra*. The Department does not automatically challenge mergers resulting in concentration above those thresholds; rather, much more extensive analysis of factors other than concentration data is necessary to conclude that such mergers would create, enhance, or facilitate the exercise of market power.

[59] Merger Guidelines at section 3.2.

[60] *Id* at section 3.23.

[61] *Id* at section 3.3.

[62] *Id.* at section 3.33, n.20 and section 3.43.

[63] *Id.* at section 3.4.

[64] *Id.* at section 3.3.

[65] *Id.* at section 3.3, n.21. *See also* "Merger Enforcement Policy: Protecting the Consumer," Remarks of Charles F. Rule, Assistant Attorney General, Antitrust Division, U.S. Department of Justice, before the 1987 National Institute, American Bar Ass'n Section of Antitrust Law, Oct. 9, 1987, at pp. 10–12.

[66] Merger Guidelines at section 3.3.

[67] *Id.* at section 3.5.

[68] *Id.*

impact of foreign competition, the Department also recognizes the effect of trade restraints in insulating U.S. firms from foreign competition. The Department's analysis of special factors affecting the competitive significance of foreign firms is illustrated in Case 2 of these Guidelines.

The Department's analysis of a merger between a domestic and a foreign firm (including issues relating to market definition) is illustrated in Cases 1 and 2. Case 3 illustrates the Department's analysis of a merger involving a foreign potential competitor. Case 4 illustrates the circumstances in which the Department might challenge a merger between two foreign firms.

3. Joint Ventures

A joint venture is essentially any collaborative effort, short of a merger, among firms with respect to production, R&D, distribution, and/or marketing of products or services. Joint ventures may be created for a variety of good business reasons. For example, joint ventures may be created to take advantage of complementary skills or economies of scale in production, marketing, or R&D; to spread risk; or, when the venture involves a foreign entity, to give an international enterprise a "local flavor." Like mergers, legitimate joint ventures and their ancillary restraints are analyzed under a rule-of-reason standard and are condemned only if they would have an anticompetitive effect that is not outweighed by procompetitive benefits.[69]

Simply labelling an arrangement a "joint venture" is not controlling for antitrust purposes, of course. The Department's prosecutorial decisions are based on substance rather than form. Accordingly, the Department would not hesitate to prosecute criminally an arrangement among competitors that was not plausibly related to economic integration of the parties' operations that might result in increased production, but that appeared to be simply a device to restrict output and/or raise (or depress) prices. Efficiency rationalizations constructed after the fact will not save what is actually a naked bid-rigging or price-fixing cartel; claimed integrative efficiencies must have been apparent at the time of the formation of the venture.[70]

Rule-of-Reason Analysis. The Department's rule-of-reason analysis of joint ventures involves two steps. First, the Department examines the joint venture's likely effect on competition in the market (or markets) in which the joint venture proposes to operate or in which the economic integration of the parties occurs (the "joint venture market"). Second, the Department determines whether the joint venture would likely have any anticompetitive effect in other markets in which the venture members also compete or might compete ("spill-over" markets). Relevant markets for this purpose are defined using the market definition principles set forth in the Merger Guidelines.[71]

Step 1—Joint Venture Market. The Department first determines whether the joint venture would likely have an anticompetitive effect in the joint venture market. If the joint venture participants do not currently compete in the joint venture market and are not likely to begin doing so in the near future independently of the joint venture, the Department can determine without detailed examination of other factors that the joint venture poses no significant threat to competition in that market. There may also be little or no anticompetitive effect in the joint venture market if the joint venture is structured so that participants would continue to compete against each other in that market [72] or if the joint venture would serve only to create additional capacity. In other cases, however, the Department must proceed to examine other factors bearing on whether the joint venture is likely to create, enhance, or facilitate the exercise of market power in the joint venture market.

If a joint venture or any of its restraints would eliminate or restrict competition between or among participants in the joint venture market, the Department would determine whether complete integration of the price and output decisions of the joint venture participants through merger would be anticompetitive. As in merger analysis, the Department focuses first on the level of concentration in the joint venture market after the joint venture is formed and the increase in concentration that would result from formation of the joint venture. If this analysis indicates that a merger of the joint venture participants could not be anticompetitive (because it would fall within a "safe harbor" [73]), then the Department can conclude without detailed examination of other factors that the joint venture would not likely have any anticompetitive effect in the joint venture market, and proceed to step 2. The Department need not independently examine the competitive effect of the venture's restraints in the joint venture market, since those restraints could have no greater anticompetitive effect than would the complete elimination of competition between the joint venture participants in that market.

If market concentration data indicates, however, that a merger of the joint venture participants might be anticompetitive, the Department proceeds to consider other factors bearing on the likely competitive effects of the joint venture, including ease of entry into the joint venture market and significant net integrative efficiencies that would result from the joint venture.[74] The Department recognizes, however, that a joint venture may have a less restrictive effect on the independent decision-making of joint venture participants with respect to price and output than would an outright merger. For that reason, the joint venture might be unlikely to create, enhance, or facilitate the exercise of market power in light of the relevant market circumstances, whereas a complete merger would be likely to do so. Moreover, net efficiencies that would result from the joint venture would be more likely to outweigh any anticompetitive risks. In addition, the parties may be able to structure their joint venture, for example, to include operational safeguards, in order to eliminate or reduce substantially any threat to competition from the joint venture.

As is implicit in this analysis, the Department in general is concerned about the effect of a joint venture in the joint venture market when the venture creates or facilitates the exercise of market power as a result of being overinclusive. Although the exclusion of competitors from participation sometimes has been the focus of antitrust concern in the past, exclusion from membership in a joint venture rarely is anticompetitive. Limiting the number of participants in a joint venture will not harm U.S. consumers, since the monopoly profits earned by the joint venture will be the same regardless of

[69] *See, e.g.*, Broadcast Music, Inc. v. Columbia Broadcasting System, Inc., 441 U.S. 1 (1979); National Collegiate Athletic Ass'n v. Board of Regents, 468 U.S. 85 (1984).

[70] A legitimate joint venture and its operating rules will almost invariably be conducted in the open. When an arrangement's purpose is at issue, other things being equal, the fact that an arrangement is covert will tend to suggest to the Department that the arrangement is not a legitimate joint venture.

[71] Merger Guidelines section 2.

[72] *See* United States v. Alcan Aluminium Ltd., 605 F. Supp. 619 (W.D. Ky. 1985) (creating a "competitive rules" production joint venture to cure competitive problems that would have resulted from a merger of the parties).

[73] *See* n.58, *supra*.

[74] *See* I.B.2., *supra*.

the number of participants in the joint venture.

In fact, selectivity in the membership of a joint venture generally enhances a joint venture's procompetitive potential. An enforcement policy that required joint ventures to open membership to all who sought it (or to license the product of an R&D joint venture to all who sought licenses) would decrease the incentives to form joint ventures, particularly those formed to undertake risky endeavors such as R&D and innovative manufacturing. First, the inability to exclude those who would bring little, if anything, to the joint venture, or those who would fail to share fully in the risks, would decrease the efficiency of the joint venture and reduce the expected reward from successfully accomplishing the joint venture's mission. Second, an enforcement policy that denied a joint venture the ability to select its members might encourage firms to forego risky endeavors in the hopes of being able to gain access through antitrust litigation to the fruits of the successful endeavors of others. Thus, only where a joint venture is the only one of its kind possible in the relevant market is there any possibility of concern about the exclusionary effects of limited membership.

Step 2—Spill-Over Markets. The Department next determines whether the joint venture or any of its ancillary restraints [75] would likely have an anticompetitive "spill-over" effect in other markets in which the joint venture participants compete or might compete. For example, an association of widget manufacturers formed to purchase joint transportation services may possess no monopsony power with respect to purchasing such services, but under certain circumstances may be able to use the association to coordinate the price and output of widgets. Spill-over analysis is likely to be particularly relevant where U.S. firms form a joint venture to operate in a foreign market. In that case, the Department generally is not concerned about the venture's effect on competition in the foreign market [76] but may be concerned about the exchange of competitively sensitive information among competitors in the U.S. market, for example.

In some cases, because of procedural or operational safeguards incorporated in a joint venture, an elaborate structural analysis will not be necessary in order to conclude that neither the joint venture nor its ancillary restraints poses a threat of anticompetitive spill-over effects. Examples of safeguards that can minimize the risk of spill-over effects include a requirement that certain types of sensitive business information be disclosed only to neutral third parties, a requirement that meetings involving representatives of the venture members be monitored by knowledgeable counsel, or a requirement that accurate and complete records of such discussions be maintained.[77]

Of course, no significant anticompetitive risks would necessarily exist even in the absence of such safeguards if conditions in the spill-over market would make successful collusion unlikely. Therefore, even if safeguards are not used by the joint venture, before challenging a joint venture or its ancillary restraints, the Department would examine market concentration and other relevant economic factors to determine whether there would likely be any anticompetitive effects in a spill-over market.[78] There might be no significant anticompetitive effects, for example, where the joint venture members account for only a small percentage of the spill-over market, or where there are strong disincentives for the joint venture members to collude in the spill-over market.[79] If the structural characteristics of the relevant spill-over market indicated that an anticompetitive effect was possible, then the Department would consider whether the efficiency benefits of employing a particular ancillary restraint outweighed any threat to competition in the spill-over market.[80]

The Department's analysis of production, research, and distribution joint ventures is illustrated in Case 5 (Joint Bidding), Case 6 (Research and Development Joint Venture) and Case 7 (Distributing a Foreign Competitor's Product).

4. Vertical Nonprice Distribution Restraints

Vertical nonprice distribution restraints are arrangements between firms operating at different levels of the manufacturing or distribution chain (for example, between a manufacturer and a wholesaler or a wholesaler and a retailer) that restrict the conditions under which firms may purchase, sell, or resell goods.[81] As the Supreme Court recognized in *Continental T.V., Inc.* v. *GTE Sylvania, Inc.*,[82] vertical nonprice restraints are often procompetitive.[83] They generally promote competition by allowing a manufacturer to achieve efficiencies in the distribution of its products and by permitting firms to compete through different methods of distribution. Firms entering a market, for example, can use such restrictions "to induce competent and aggressive retailers to make the kind of investment in capital and labor that is often

[75] To be "ancillary," a restraint must be plausibly related to the legitimate ends of the joint venture—that is, the restraint must not be a "naked" agreement which is designed simply to restrict output and/or to raise price in some market other than the joint venture market. *See* discussion of naked restraints of trade at nn.45–46 and accompanying text, *supra*. For example, the Department would likely regard a secondary agreement in a joint venture to produce pocket calculators that restricted competition in the production of ball point pens not to be plausibly related to the integration of the parties' operations achieved by the joint venture. Such a restraint may therefore be subject to prosecution, possibly as a criminal violation of the Sherman Act.

[76] This would be the case unless the U.S. government through payments or financing would substantially bear the cost of an affected transaction. *See* discussion at n.41 and accompanying text, *supra*, and Case 5.

[77] With respect to shipping associations, for example, the Department has suggested three safeguards against anticompetitive spill-over effects. First, association members would not be required to tender all of their shipments through the association, but would be free to use rates negotiated by any other association and rates that members negotiated independently. Second, negotiations between an association and a carrier or shipping conference would be conducted on a confidential basis by an officer or employee of the association who is not also an employee of a member. Third, all communications between the association and individual members would be kept confidential. See "The Antitrust Division's Approach to Shippers' Associations," Remarks of Charles F. Rule, Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice, Before the Chemical Manufacturers Association, Oct. 21, 1985 (setting forth guidelines for assessing the competitive effects of shipping associations) (hereinafter cited as "Shippers Speech"). *See also* Letter from Charles F. Rule, Assistant Attorney General, Antitrust Division, to Jerome J.C. Ingels of Petroleum Independents Cooperative, Inc., March 9, 1988 (indicating no present intention to challenge proposed association of natural gas producers to negotiate and market services that members are too small to provide alone, where several safeguards against anticompetitive conduct are in place); ETC Guidelines, 50 Fed. Reg. at 1794–1798 (discussing, *inter alia*, conditions of certification relating to exchange of competitively sensitive information).

[78] *See* Shippers Speech, *supra* n.77.

[79] *See, e.g.*, Letter from William F. Baxter, Assistant Attorney General, Antitrust Division, to Irving B. Yoskowitz, Vice President and General Counsel, United Technologies Corp., October 27, 1983 (disincentives to collusion among joint venture participants in spill-over markets).

[80] *See* discussion of efficiencies at I.B.2., *supra*.

[81] Another way to describe vertical arrangements is as agreements involving the owners of complementary inputs; under this terminology, horizontal agreements are those involving the owners of substitute inputs.

[82] 433 U.S. 36, 54–57 (1977).

[83] An agreement between a manufacturer and one or more distributors setting the resale price of the manufacturer's product is per se illegal. However, a vertical distribution restraint is per se illegal only if it includes some agreement on price or price levels; a distribution restraint that may only affect price is analyzed under the rule of reason. *See* Sharp, *supra* n.43, 56 U.S.L.W. at 4392.

required in the distribution of products unknown to the consumer." [84] Such restrictions can also serve to protect investments by a manufacturer's dealers in service and promotion related to the manufacturer's brands from other dealers who do not make such investments but cut their price in order to take advantage of the full-service dealers' investments (the so-called "free-rider" problem). As the Supreme Court has recognized, vertical nonprice restraints can in this way increase competition among competing manufacturers (or interbrand competition), which is the primary concern of antitrust law.[85] Eliminating the free-rider problem is only one way in which vertical nonprice restraints can enhance competition.

Under special market conditions, certain vertical nonprice restraints conceivably might serve to facilitate collusion among competing manufacturers with respect to the price and/or output of their products.[86] For example, dealers might induce all or almost all suppliers of a product to award exclusive territories in order to facilitate a cartel at the dealer level by reducing the number of dealers that must collude and protecting colluding dealers from the threat of outside competition in response to anticompetitive pricing. In addition, suppliers might attempt to facilitate collusion among dealers where dealer collusion would be more practical or less costly than direct collusion among the suppliers and the suppliers can share in the resulting monopoly profits.[87]

Vertical nonprice restraints will not facilitate such collusion, however, unless three necessary (but not sufficient) market conditions exist after a restraint is imposed: (i) The "primary" level of the market that instigates the restraint (the manufacturer level or the dealer level) must be very highly concentrated; (ii) firms at the "secondary" level of the market using the restraint (or very similar restraints) must account for a large portion of sales in that market; and (iii) entry into the primary market must be difficult.[88] Unless the level of the market instigating the restraint is very highly concentrated, it is implausible that vertical nonprice restraints would serve to coordinate and police pricing and/or output decisions among competitors at that level without an express agreement among them.[89] A vertical nonprice restraint is also unlikely to result in successful collusion unless the combined market share of firms at the secondary level of the market using the restraint is large; otherwise, secondary level firms not subject to the same or similar restraints would likely frustrate any collusion.[90]

Under special market conditions, a vertical restraint might also result in the anticompetitive exclusion [91] of rivals from the market by denying them access to an essential input or to essential distribution facilities. A restraint (for example, an exclusive dealing arrangement) will not have an anticompetitive exclusionary effect in a relevant market unless three necessary (but not sufficient) market conditions exist: (i) The market in which firms using the restraint operate (the "nonforeclosed" market) must be very highly concentrated and leading firms in the market must use the restraint; (ii) firms subject to the restraint must control a large share of the "foreclosed" market; and (iii) entry into the "foreclosed" market must be difficult. Anticompetitive exclusion is not likely to result from a vertical nonprice restraint if any of these conditions are absent. Unless the firms imposing the restraints are very few in number, control most or all of the "nonforeclosed" market, and are currently earning monopoly profits, they will have neither the incentive nor the ability effectively to exclude other competitors from the market through a foreclosure strategy. In addition, unless the restraint applies to all or a very large portion of firms in the "foreclosed" market, rivals could simply use remaining available capacity to enter or expand in the market.[92]

Even if the minimum necessary conditions exist, of course, other market conditions may prevent a particular nonprice vertical restraint from having either a collusive or an exclusionary effect in any relevant market. Moreover, any competitive effect may be outweighed by the procompetitive benefits of the arrangement.

As a general matter, the Department employs a two-step analysis to determine whether a particular vertical nonprice restraint is likely to be anticompetitive.

Step 1. First, the Department takes a "quick look" at the degree of concentration in the relevant markets and at the market shares of firms employing the restraint to determine whether the restraint could plausibly have an anticompetitive effect.[93] If the necessary market conditions for successful collusion or anticompetitive exclusion—most significantly, high concentration at the level instigating the restraint—are not met, the Department can quickly determine that a restraint is not anticompetitive. In addition to the necessary minimum conditions described above, if a particular firm using a restraint has a small market share (e.g., ten percent or less), its use of the restraint normally would not be anticompetitive. Firms with such small market shares do not possess market power individually, and are unlikely to be important to any cartel [94] or agreement to facilitate a cartel or to any exclusionary scheme. Of course, if there were evidence that a small firm employing restraints was part of an unlawful cartel among competitors, the Department would not hesitate to investigate its activities and, if appropriate, prosecute those activities criminally.

In most cases, the minimum necessary conditions will not exist, and a cursory examination of the restraint under step 1 will indicate that the vertical restraint is safe from legal challenge by the Department. If the minimum necessary market conditions for either collusion or anticompetitive exclusion do exist, however, the Department proceeds to a closer rule-of-reason analysis to determine the restraint's likely net effect on consumer welfare.[95]

Step 2. The Department first assesses the likelihood that entry by new firms at either of the relevant market levels

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[84] Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. at 52 n.19.

[85] *See* Sharp, 56 U.S.L.W. at 4389 (quoting *Continental T.V.*, 433 U.S. at 52 n.19).

[86] The general standards and specific principles the Department applies in analyzing the competitive effects of vertical nonprice distribution restraints are set forth in detail in the Department's Vertical Restraints Guidelines. U.S. Department of Justice Vertical Restraints Guidelines, Jan. 23, 1985 (hereinafter cited as "Vertical Restraints Guidelines"). The Supreme Court noted in Sharp, 56 U.S.L.W. at 4389, however, that "support for the cartel-facilitating effect of vertical nonprice restraints was and remains lacking."

[87] *But see id.*

[88] Vertical Restraints Guidelines section 3.21.

[89] If the Department had evidence of such an agreement, of course, the agreement would likely be prosecuted as a violation of section 1 of the Sherman Act.

[90] Vertical Restraints Guidelines section 3.21.

[91] All contracts between two parties in some sense exclude non-contracting parties. The antitrust laws are concerned, however, only with exclusion that will result in the ability to exercise power over price and/or output in a relevant market. *See* National Society of Professional Engineers v. United States, 435 U.S. 679, 687–90 (1978); Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36, 49 (1977); Chicago Board of Trade v. United States, 246 U.S. 231, 238 (1918).

[92] Vertical Restraints Guidelines section 3.22.

[93] *Id.* at section 4.1.

[94] *See* Merger Guidelines section 4.134.

[95] Vertical Restraints Guidelines at section 4.2.

would frustrate any collusion or exclusion scheme. As in the case of merger analysis, the Department's focus is on whether significant entry would occur within a relatively short period of time in response to an anticompetitive price increase.[96] If entry is sufficiently difficult that it cannot be expected to reduce substantially any anticompetitive potential of the restraint, then the Department proceeds to consider other factors, including whether the restraint has had an exclusionary effect (if there is sufficient experience from which to judge); whether the restraint has survived for a long period; whether the restraint is "airtight" (considering, for example, the severity of penalities for abrogating the terms of a restraint); whether market conditions are conducive either to collusion or to anticompetitive exclusion; and whether use of the restraint results in significant integrative efficiencies producing benefits to consumer welfare that outweigh the risk of potential anticompetitive harm. Where vertical restraints have been in existence for a sufficient length of time to make it possible to evaluate their competitive effects, the Department would look primarily to an analysis of those effects. All other things being equal, the Department would more likely challenge a restraint that may have an anticompetitive effect if there is a history of collusion by firms at either level of the market.

Case 8 of these Guidelines illustrates the Department's vertical analysis in the context of a foreign firm's use of an exclusive distribution arrangement in the United States. The Department's vertical analysis in the context of various types of intellectual property licensing arrangements is also discussed below and illustrated in Cases 10, 11, and 12.

5. Intellectual Property Licensing Arrangements

For the purpose of antitrust analysis, intellectual property (e.g., patents, copyrights, trade secrets, and know-how) is essentially comparable to any other form of tangible or intangible property that is created, transferred, or used in the production of goods or services. At one time, antitrust policy proceeded on the assumption that intellectual property rights and the licensing of those rights conflicted with the goals of the antitrust laws because intellectual property rights were thought to create "monopolies." Intellectual property—even a patent—does not, however, necessarily confer an economic monopoly or even market power on its owner. A patent is merely a legally cognizable property right to the exclusive use of technical information specified in the patent grant. The patent remains subject to competition from information outside its scope that is an economic substitute for the patented product or process. For example, two patented pharmaceuticals may be economic substitutes for the same medical indication, and any attempt by one patent owner to raise the price of its drug would result in substitution toward the other drug.

To the extent that a patent or some other form of intellectual property does confer some competitive advantage on its owner (even to the extent of conferring a true economic monopoly) it is still comparable to other kinds of property that yield similar benefits. A new, state-of-the-art production facility, for example, may give its owner a competitive advantage in the form of lower production costs, perhaps for a significant period of time. The owner of intellectual property is fully entitled to enjoy whatever market power the property itself confers. Respecting the rights of an intellectual property owner to enjoy the full value of the property it has created provides an incentive for the innovative effort required to create intellectual property. The results of that innovative effort, in turn, expand society's knowledge and wealth and increase productive efficiency.

Licenses. Licenses of patents and other forms of intellectual property are contracts transferring to the licensees a right to use intellectual property. The licensing of intellectual property benefits consumers by expanding access to technology and bringing it to the marketplace in the quickest and most efficient manner. Licensing permits the owner of technology to, in effect, combine the owner's assets with the manufacturing and distribution assets of others. By permitting the owner to exploit the owner's intellectual property as efficiently and effectively as possible, licensing also increases the perceived value of intellectual property and increases incentives to invest in creating the property in the first place.

Particular restraints in intellectual property licenses can play an important role in encouraging the efficient development and use of licensed technology. This may be essential to ensure that new technology realizes its maximum legitimate return and benefits consumers as quickly and efficiently as possible. A licensor, for example, may encourage a licensee to make investments that are necessary to develop and promote the licensed technology by giving the licensee some exclusive use of that technology. Similarly, allowing the owner of intellectual property to reserve some exclusive use of the licensed property to itself encourages efficient licensing of technology where the owner of intellectual property otherwise might choose not to license its property at all.[97]

Rule of Reason Analysis. Because of their generally procompetitive nature, the Department analyzes the competitive effects of intellectual property licenses and their restrictions under a rule of reason, unless the underlying transfer of technology is a sham [98] or the license restrictions restrain competition between the licensor and licensee and bear no relationship to the underlying transfer of technology. Under the rule-of-reason analysis, the license and its ancillary restrictions are considered to be unlawful only if they are used to facilitate collusion or suppress competition in some relevant market and the risk of anticompetitive effects is not outweighed by the procompetitive benefits of the restrictions.

The Department does not normally inquire whether a particular license restriction is necessary to accomplish its procompetitive goals, or whether some less restrictive alternative could be used to achieve the same goals. In general, the Department considers the cumulative effects of all restrictions in an intellectual property license: if cumulatively the restrictions would have no significant anticompetitive effects or if any anticompetitive effects would be outweighed by the cumulative procompetitive benefits of the licensing arrangement, then none of the restrictions would be challenged.

The rule-of-reason analysis the Department applies to intellectual property licenses is the same as it applies to all other integrative contracts. Restrictions in a license may explicitly or implicitly entail horizontal restraints,

[96] *Id.* at section 4.21.

[97] For examples of other procompetitive intellectual property license restrictions, see "The Antitrust Implications of International Licensing: After the Nine No-no's," Remarks by Charles F. Rule before the Legal Conference sponsored by the World Trade Association and the Cincinnati Patent Law Association (Oct. 21, 1986).

[98] A license is regarded as a sham if the parties demonstrably are not interested in conveying and receiving intellectual property rights, but rather are using the license as a guise to cover an effort to restrict output and/or raise price in some other market. Restrictions on competition accompanying a sham license may be per se unlawful and, where appropriate, prosecuted criminally.

vertical restaints, or both, depending on the relationship of the parties. A horizontal restraint is one that limits competition between the licensor and licensee in one or more markets [99] in which they are actual or potential competitors.[100] A vertical restraint is one that does not eliminate horizontal competition between the licensor and licensee, but may limit competition between the intellectual property owner and other owners of intellectual property, or between the licensee and other licensees who are not parties to the license. In each instance the Department seeks to determine whether the license restriction would create or facilitate the unilateral or concerted exercise of market power.

The Department's analysis of technology license restrictions under the rule of reason is generally guided by two principles. First, the antitrust laws do not proscribe licensing arrangements that simply represent an effort by the owner of intellectual property fully to appropriate the inherent value of the technology. The potential for appropriating that value is the economic incentive to engage in risky and costly R&D in the first place. Second, the antitrust laws do not require the owner of technology to create competition in its own technology.

Horizontal Restraints. If the licensor and licensee are competitors in the technology market in which the intellectual property being licensed competes, or if the licensor and licensee are competitors in some other market that is affected by restrictions in the license, then the license and its restraints are properly analyzed as a horizontal agreement. A license restriction might, for example, prohibit a licensee that owns a competing technology from selling products that could be made using the competing technology in the United States. This is a horizontal restraint.[101] Alternatively, a license may be tantamount to the licensee's acquisition of the licensor's technology in a market. Again, if the licensee owns a competing technology (or is one of only a very few persons that could be expected to develop a competing technology), then this is properly analyzed as a horizontal restraint.

Horizontal restraints in an intellectual property license would be analyzed as a joint venture.[102] The Department would begin its analysis by defining the relevant technology or other market or markets that would be affected by the horizontal restraint. The Department would not assume that a patent or other piece of intellectual property delimited the relevant market. As explained above, there may be economic substitutes for that property which would make any attempt to exercise unilateral market power impossible.

After defining the relevant market or markets in which the licensee and licensor compete and that are affected by a horizontal restraint, the Department would apply the analysis set forth in the Merger Guidelines to determine whether the complete elimination of competition between the licensee and licensor in that market by virtue of their merger would be anticompetitive.[103] Even if a complete merger of the parties would be anticompetitive, however, the restraint would not necessarily be anticompetitive, since it may not restrict competition in the relevant market or markets as completely as would the total economic integration entailed by a merger. The Department would therefore examine the precise nature and extent of the elimination of price and output decision-making that would result from the license restriction.[104] If the Department's analysis disclosed that restrictions in a license could be significantly anticompetitive, then the Department would go on to assess their competitive benefits and whether the benefits outweigh the likely anticompetitive effects. In general, the Department will consider the cumulative effects—both procompetitive and anticompetitive—of all the restrictions, rather than examining each restriction in isolation.

As with any joint venture, the Department would generally not be concerned that a horizontal intellectual property licensing arrangement (for example, a patent pool) was not opened to competitors, even if it was the only possible venture in the relevant market.[105] A patentee should not be compelled to forego its statutory right to exclude the world from sharing in its invention simply because it has chosen not to exclude a few. The anticompetitive effects from selectively allowing some but not all competitors to participate in a horizontal intellectual property agreement will rarely, if ever, outweigh the procompetitive incentives to innovate and to exploit new technologies guaranteed by that selectivity.

Vertical Restraints. Because an intellectual property license typically involves the combination of complementary inputs—that is, the licensor and licensee do not compete in any market affected by the license—any restrictions in the license will best be characterized as vertical restraints. The Department will challenge purely vertical restraints in intellectual property licenses only in exceptional circumstances. For example, it is unlikely that vertical restraints in a license for technology that has no economic substitutes would ever be challenged by the Department. An exclusive license to a single licensee carries too little, if any, risk of collusion and too great an inherent procompetitive potential to warrant antitrust condemnation. Vertical restraints in an intellectual property license are analyzed in the same way the Department analyzes vertical restraints generally,[106] although intellectual property licensing arrangements are even more likely than other kinds of vertical agreements to produce significant procompetitive benefits.

The Department's analysis of various common types of intellectual property licensing arrangements is illustrated in Cases 10, 11, and 12 of these Guidelines. Case 10 illustrates the Department's analysis of purely vertical restrictions in a patent license. Case 11 illustrates the Department's analysis of an exclusive patent cross-license with grantbacks. Case 12 illustrates the Department's analysis of a know-how technology transfer agreement with exclusive territories.

C. Jurisdictional Considerations

Just as the acts of U.S. citizens in a foreign nation ordinarily are subject to the law of the country in which they take place, the acts of foreign citizens in the United States ordinarily are subject to U.S. law. The reach of the U.S. antitrust laws is not limited solely to conduct and transactions that occur within the United States, however. As a

[99] For example, a license might restrict the persons to whom or prices at which the parties can license competing technologies. Or, a license might restrict the price and/or output decisions of the parties with respect to some product that they do or would sell in competition with each other. *See* Andewelt, "Analysis of Patent Pools Under the Antitrust Laws," 53 Antitrust L.J. 611 (1984).

[100] *See* I.B.2., *supra.*

[101] That does not mean, of course, that the restraint is anticompetitive and, therefore, unlawful. So long as the restriction is not part of a sham licensing scheme disguising a naked cartel, it should be analyzed under a rule of reason.

[102] *See* I.B.3., *supra.*

[103] *See* Merger Guidelines sections 3.1–3.4.

[104] *See* I.B.3., *supra.*

[105] *See* discussion of joint venture analysis at I.B.3., *supra.*

[106] *See* I.B.4., *supra.*

general matter, conduct relating to U.S. import trade that harms consumers in the United States is subject to the jurisdiction of the U.S. antitrust laws regardless of where such conduct technically occurs or the nationality of the parties involved. Thus, for example, applying the Sherman Act to restrain or punish a private international cartel, the purpose and effect of which is to restrict output and raise prices to U.S. consumers, is both appropriate and necessary to effective enforcement of that Act. On the other hand, the Sherman Act would not properly be applied to the activities of U.S. and/or foreign firms in foreign markets that had no direct, substantial, or reasonably foreseeable effect on competition or consumers in the United States.[107]

1. Foreign Trade Antitrust Improvement Act

The jurisdictional limits of the Sherman Act as it applies to conduct involving non-import foreign commerce are described in the Foreign Trade Antitrust Improvement Act ("FTAIA").[108] The FTAIA limits Sherman Act jurisdiction over non-import foreign commerce. It provides that the Sherman Act:

> shall not apply to conduct involving trade or commerce (other than import trade and commerce) with foreign nations unless
>
> (1) such conduct has a direct, substantial, and reasonably foreseeable effect—
>
> (A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or
>
> (B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and
>
> (2) such effect gives rise to a claim under the provisions of [the Sherman Act], other than this section.
>
> If [the Sherman Act] applies to such conduct only because of the operation of paragraph (1)(B), then [the Sherman Act] shall apply to such conduct only for injury to export business in the United States.

By its terms, the FTAIA applies only to certain types of cases under the Sherman Act; conduct involving import commerce and mergers and acquisitions remain subject to the arguably lesser jurisdictional thresholds of sections 1 and 2 of the Sherman Act and section 7 of the Clayton Act, respectively. Nevertheless, the FTAIA essentially codified a standard that the Department generally applies in Sherman Act import commerce cases and cases under section 7 of the Clayton Act as well. The Department attempts to give practical meaning to the terms "direct, substantial, and reasonably foreseeable" by taking action in those cases where there is or would be a significant adverse effect on consumers in the United States.

2. Foreign Sovereign Immunities Act

Under the Foreign Sovereign Immunities Act[109] foreign sovereigns and their instrumentalities are immune from suit in U.S. courts, except under specifically delineated circumstances. The most commonly applied exception in antitrust cases is the so-called "commercial acts" exception. Under that exception, foreign sovereigns and their agencies and instrumentalities may be sued for their commercial activities.[110] Application of this exception to the Foreign Sovereign Immunities Act is illustrated in Case 14 of these Guidelines.

D. Factors Affecting the Department's Discretion in Asserting Jurisdiction

In enforcing the antitrust laws, the Department recognizes that considerations of comity among nations—the notion that foreign nations are due deference when acting within their legitimate spheres of authority—properly play a role in determining "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation."[111] Moreover, the pattern of U.S. trade suggests that an unlimited application of the antitrust laws in the international context could significantly affect the sovereign interests of foreign nations and have far-reaching and potentially detrimental effects on U.S. foreign relations without significantly benefitting U.S. consumer welfare. Thus, even where conduct would affect U.S. consumers, as a matter of comity and in the exercise of its prosecutorial discretion, the Department considers the significant interests of other nations in every case in which they may be implicated.[112] In fact, the Department is committed to consider the legitimate interests of other nations in accordance with recommendations of the Organization for Economic Cooperation and Development (OECD) and with bilateral agreements with several foreign governments.[113]

In determining whether it would be reasonable to assert jurisdiction or seek particular remedies in a given case, the Department first considers whether any significant interests of foreign nations would in fact be affected by such exercise of jurisdiction. Experience shows that in most cases a country's application of its competition laws to protect its own consumers will not adversely affect the significant interests of other sovereigns. If it appeared that applying U.S. antitrust laws to particular transnational conduct would have such an effect, however, the Department generally would consider the following six factors:

(1) The relative significance, to the violation alleged, of conduct within the United States as compared to conduct abroad;

(2) The nationality of the persons involved in or affected by the conduct;

(3) The presence or absence of a purpose to affect United States consumers or competitors;

(4) The relative significance and foreseeability of the effects of the conduct on the United States as compared to the effects abroad;

(5) The existence of reasonable expectations that would be furthered or defeated by the action; and

(6) The degree of conflict with foreign law or articulated foreign economic policies.[114]

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[107] *See* 15 U.S.C. 6a (1982), discussed below. *See also* McGlinchy v. Shell Chemical Co., 1988–1 Trade Cas. (CCH) ¶ 67,973 (9th Cir. 1988) (effect on a competitor, as opposed to competition, not sufficient); Eurim-Pharm GmbH v. Pfizer Inc., 593 F. Supp. 1102 (S.D.N.Y. 1984); Liamuiga Tours, Div. of Caribbean Tourism Consultants, Ltd. v. Travel Impressions, Ltd., 617 F. Supp. 920 (E.D.N.Y. 1985); Papst Motoren GmbH & Co. v. Kanematsu-Gosho (U.S.A.) Inc., 1986–1 Trade Cas. (CCH) ¶ 66,924 (S.D.N.Y. 1986).

[108] 15 U.S.C. 6a (1982).

[109] 28 U.S. 1330, 1602–1611 (1982).

[110] *See id.* at section 1605(a)(2); *see, e.g.*, Laker Airways v. Sabena, Belgian World Airlines, 731 F.2d 909, 925 (D.C. Cir. 1984).

[111] Hilton v. Guyot, 159 U.S. 113, 164 (1895). *See generally* McCulloch v. Sociedad Nacional, 372 U.S. 10 (1963); Lauritzen v. Larsen, 345 U.S. 571 (1953); The Charming Betsy, 6 U.S. (2 Cranch) 64 (1804).

[112] In lieu of bringing an enforcement action, of course, the Department may consult with affected foreign sovereigns through appropriate diplomatic channels to eliminate or substantially to reduce anticompetitive effects in the United States.

In the Department's view, government actions should not be subject to dismissal on the basis of comity. A decision by the U.S. government to prosecute an action amounts to a determination by the Executive Branch that the interests of the United States supercede the interests of any foreign sovereign and that the challenged conduct is more harmful to the United States than would be any injury to foreign relations that might result from the antitrust action. Thus, government suits do not create the risk raised by private actions that a judicial finding of liability will intrude on the legitimate interests of foreign sovereigns.

[113] *See* n.1, *supra*.

[114] Similar factors are included in proposed legislation which would govern the exercise of jurisdiction by U.S. courts in private antitrust litigation that arises out of disputes involving foreign or transnational conduct. S. 539, 100th Cong., 1st Sess. (1987); S. 397, 99th Cong., 2d Sess. (1986).

In addition, in extraordinary circumstances, the Executive Branch may take into account the effect of antitrust prosecution on the United States' foreign relations.[115]

E. Foreign Sovereign Compulsion

In some cases, foreign sovereign authorities may have compelled private parties to engage in conduct that has an anticompetitive effect on U.S. commerce. A sensible approach to the antitrust laws that accommodates notions of comity supports the reading of an implied (and thus limited) defense to application of the U.S. antitrust laws based on foreign sovereign compulsion. As discussed above,[116] Congress enacted our antitrust laws against the background of well-recognized principles of international comity among nations which give due deference to the lawful acts of foreign sovereigns acting within their legitimate spheres of authority. That deference is most acutely called for when a foreign sovereign has actually compelled the conduct in question.[117] Indeed, in a system of international trade where the United States can be found negotiating for certain export restraints, it would be anomalous not to recognize the existence of foreign sovereign compulsion.

Under the following circumstances, therefore, the Department will not prosecute anticompetitive conduct that has been compelled by a foreign sovereign.[118] First, a foreign sovereign actually must have compelled the anticompetitive conduct [119] in circumstances in which a refusal to comply with the foreign sovereign's mandate would give rise to significant penalties (as opposed to the mere denial of benefits, for example). It is not enough that private anticompetitive conduct is merely encouraged, permitted by, or consistent with the laws or policies of the foreign sovereign. While such foreign government encouragement or permission may be taken into account in a general comity analysis, it will not have the determinative effect of actual compulsion; the lack of compulsion may also be strongly indicative of the fact that enforcing our antitrust laws would not impinge significantly on the national interests of the foreign sovereign.

Second, the foreign sovereign's command must have been within the scope of its authority under its own laws. For this purpose, a foreign government's formal assertion concerning the existence and meaning of its domestic law ordinarily would be conclusive.

Third, deference to the foreign state's actions must be warranted under the circumstances. This criterion is not intended to swallow the notion of foreign sovereign compulsion. Consistent with accepted principles of international comity, however, the Executive Branch may determine in a given case that the national interests of the United States are more significantly affected than are those of the foreign sovereign, or that the compelled conduct would be more harmful to the United States than would be any potential for injury to U.S. foreign relations that may result from an antitrust suit.

Finally, although territorial tests are often difficult to apply, and are therefore often not useful, in cases where the compelled conduct plainly has occurred wholly or primarily in the United States, the Department will not generally recognize foreign sovereign compulsion as a defense. An example of conduct occurring in the United States as to which the defense would not apply is a foreign government requirement that a U.S. subsidiary of a foreign firm organize a cartel in the United States with other U.S. firms to fix the price at which products would be sold in some local U.S. market.

Foreign sovereign compulsion should be distinguished from the federalism-based state action doctrine. The state action doctrine applies to private anticompetitive conduct that is taken pursuant to clearly articulated state policies and is subject to active state supervision, as well as to conduct that actually is compelled by a state.[120] The Sherman Act doctrine of state action embodies the notion that the U.S. Congress should not be presumed to have intended to interfere with the authority of the states "constitutionally to regulate their domestic commerce." [121] Because our federal structure of government is designed to secure to the states a wide range of regulatory alternatives, the U.S. Supreme Court has held that state compulsion is too strict a standard to employ in state action cases.[122] The federal government retains authority under the Supremacy Clause to void any state cartel program that has a noxious effect on interstate commerce. In contrast, the sovereign compulsion defense serves the quite different purpose of preventing direct clashes with the most significant interests of foreign sovereigns. This purpose is advanced most directly when the foreign government has actually compelled the challenged conduct.[123]

In addition, a standard like that of the state action doctrine would be difficult to apply in the international context. Given the complexity and novelty of foreign legal systems and the difficulty of obtaining foreign-located evidence, private firms would have many opportunities to attempt to evade legitimate application of the U.S. antitrust laws wherever there was an arguable foreign national policy underlying anticompetitive conduct. In addition, the use of an "active supervision" standard of the sort applied in state action cases would require difficult inquiries into the foreign sovereign's conduct of its own affairs.[124]

Difficult legal and policy issues nonetheless may arise when a foreign government instigates, but does not strictly compel, export restraints by firms within its jurisdiction. Considerations of international comity

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[115] *See, e.g.*, Department of Justice Press Release, dated Nov. 19, 1984 (announcing President's decision to close grand jury investigation for foreign policy reasons). The Department does not believe, however, that this factor should properly be considered by courts in the context of either private litigation or in litigation initiated by the United States, since the conduct of foreign relations is constitutionally reserved to the Executive Branch.

[116] *See* I.D., *supra*.

[117] Recognizing this defense also ensures that U.S. and foreign firms will not be unfairly subjected to prosecution under the U.S. antitrust laws for activities compelled by another sovereign. In the absence of considerations of comity and direct conflict with the significant national interests of a foreign sovereign, however, abstract and undefined notions of "fairness" to firms that engage in anticompetitive conduct should not obstruct the legitimate prosecution of antitrust offenses that directly, substantially and foreseeably affect U.S. consumers in direct contravention of the U.S. antitrust laws.

[118] Foreign sovereign compulsion is not properly regarded as a legal defense in antitrust suits brought by the United States, however. A decision by the United States to prosecute an action amounts to a determination by the Executive Branch that the challenged conduct is more harmful to the United States than would be any injury to foreign relations that might result from the antitrust action. Thus, government suits do not create the risk raised by private actions that a judicial finding of liability for compelled conduct will significantly interfere with the conduct of foreign relations by the Executive Branch. As a practical matter, however, the Department generally would not challenge conduct to which the foreign sovereign compulsion defense would apply in private litigation. *See* Brief for the United States as Amicus Curiae Supporting Petitioners, Matsushita Elec. Ind. Co., Ltd. v. Zenith Radio Corp., No. 83-2004 (June 1985).

[119] *See* Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690 (1962); Sociedad Nacional, *supra*, n.111, 372 U.S. at 21.

[120] *See* Parker v. Brown, 317 U.S. 341 (1943); Southern Motor Carriers Rate Conference, Inc. v. United States, 471 U.S. 48 (1985).

[121] Southern Motor Carriers, *supra* n.120, 471 U.S. at 56.

[122] *Id.*, 471 U.S. at 61.

[123] *Id.*

[124] *Id.*

may lead the Department not to challenge export restraints that clearly have arisen from the decision and actions of a foreign government and are intended to promote significant national economic interests of that sovereign, even if the restraints formally have not been compelled. This is especially true if the foreign government has instigated the restraints at the request of the U.S. government. The Department's analysis of this kind of situation is illustrated in Case 16, which deals with a voluntary export restraint.

Businesses may obtain greater certainty concerning their liability for conforming to the anticompetitive order of a foreign government by seeking to obtain an opinion of the Department under its Business Review Procedure.[125] Case 14 of these Guidelines addresses the issue of foreign sovereign compulsion in the context of a cartel governing sales made in the United States.[126]

F. International Trade Friction and the U.S. Trade Laws

Governmental and private conduct undertaken pursuant to the U.S. trade laws, or to resolve disputes causing international trade friction, often affects competition in markets serving U.S. consumers. This may occur, for example, when an antidumping or countervailing duty case leads to the imposition of additional duties or to resolution under provisions in the law that allow for restrictions on the prices or quantities of imported products. Foreign imports may also be limited by voluntary export restraints that may have been adopted by a foreign government unilaterally at the request of the U.S. government.

The individual or joint conduct of U.S. firms seeking U.S. government protection from foreign competition generally is immune from prosecution under the antitrust laws. Under the *Noerr-Pennington* doctrine,[127] the courts have construed the Sherman Act—in light of interests implicated by the First Amendment to the U.S. Constitution—not to interfere with individual or collective petitioning of the U.S. federal or state governments, even when the government action sought would have an anticompetitive effect.

Ostensible petitioning conduct is not immune, however, when it is in fact a mere sham concealing a direct restraint by the parties. Examples of sham petitioning include, in certain circumstances, the meritless invocation of administrative procedures to delay a competitor's entry or to deny its access to government processes and the deliberate misleading of the government during such administrative proceedings.[128] The threat to consumer welfare from such abuse may be substantial. Although most litigated findings of sham petitioning have involved a pattern of abuse, in appropriate circumstances, a single anticompetitive abuse of governmental processes may suffice. Application of the sham exception to the *Noerr-Pennington* doctrine is illustrated in Case 13, which deals with the filing of a sham patent claim under section 337 of the 1930 Tariff Act in order to exclude imports.

Since the *Noerr-Pennington* doctrine rests on a construction of the Sherman Act that is derived at least in part by reference to the First Amendment right to petition, that doctrine may not apply to the petitioning of foreign governments by U.S. and foreign firms.[129] Nevertheless, for reasons of comity, the Department's policy is not to prosecute the legitimate petitioning of foreign governments by foreign or U.S. firms in circumstances in which the United States protects such activities by its own citizens. This point is illustrated in Case 15, which deals with a foreign government-imposed export restraint.

Of course, the mere involvement of U.S. or foreign government officers, allegations of U.S. trade law violations, or an alleged intention to resolve international trade frictions, will not protect naked agreements among competitors to restrict output or fix prices. The U.S. trade laws, for example, set forth specific procedures for settling disputes under those laws. Any agreement among competitors that does not strictly comply with those procedures may be prosecuted in appropriate cases, perhaps even as criminal price-fixing. The Department's analysis of agreements made in response to trade disputes is illustrated in Case 17.

Conclusion

The vast majority of international business transactions, like most domestic transactions, do not raise antitrust concerns. One of the purposes of these Guidelines is to ensure that uncertainty about the Department's enforcement policy in international contexts does not cause businesses to limit unobjectionable transactions or to avoid efficient and productive arrangements that benefit consumers. At the same time, these Guidelines make plain the Department's commitment to prosecute naked restraints of trade, such as horizontal price-fixing, bid-rigging, and market allocation, that have no plausible connection to achieving significant integrative efficiencies and almost certainly reduce output and/or raise prices to the detriment of U.S. consumer welfare.

Part II. Illustrative Cases

The following hypothetical case discussions illustrate how the Department would apply the foregoing analysis in seventeen representative fact situations. In most cases, the outcome of the Department's analysis will depend on the specific facts and circumstances of the case. These hypothetical case discussions therefore do not provide absolute answers to the factual and economic questions the Department would ask in analyzing particular conduct and transactions under the antitrust laws. Rather, they are intended to provide a coherent framework for that analysis. By providing this analytical framework, the Department hopes to provide U.S. and foreign businesses with a better understanding of when and why the Department is likely to take antitrust enforcement action in particular cases.

Case 1—Foreign Acquisition by a U.S. Firm

Alpha Corporation, a U.S. firm that manufactures and sells product X in the United States, proposes to acquire all of the stock of Beta Corporation, a Japanese firm that also sells X in the United States. X is a piece of high technology hardware that is used in several military and civil aerospace applications. There are no known substitutes for X for those applications, and no other known applications for X.

Alpha is the largest supplier of X in the United States. It supplies approximately 25 percent of all U.S. consumption. Beta, the world's leading

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[125] 28 CFR 50.6.

[126] For an example of an arrangement as to which the Department concluded that the defense of sovereign compulsion would apply, see Exchange of Letters between Japanese Ambassador Yoshio Okawara and Attorney General William French Smith, May 7, 1981, *reproduced in* U.S. Import Weekly (BNA), May 13, 1981, at M-1 to M-2.

[127] *See* Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961); United Mine Workers of America v. Pennington, 381 U.S. 657 (1965); and California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972). The doctrine developed out of these cases is known as the *Noerr-Pennington* doctrine.

[128] *See* California Motor Transport Co. v. Trucking Unlimited, *supra*, n.127, 404 U.S. at 515–516.

[129] *See* Occidental Petroleum Corp. v. Buttes Oil & Gas Co., 461 F.2d 1261 (9th Cir.) (per curiam), *cert. denied*, 409 U.S. 950 (1972); Australia/Eastern U.S.A. Shipping Conf. v. United States, 537 F. Supp. 807, 812–13 (D.D.C. 1982). *But See* Coastal States Marketing, Inc. v. Hunt, 694 F. 2d 1358, 1364–67 (5th Cir. 1983).

producer of X, supplies approximately 15 percent of U.S. consumption. X imports from Japan, the European Economic Community ("EEC"), and Brazil collectively account for approximately 40 percent of current U.S. consumption, and the level of X imports from these countries has been rising.

Discussion

Because Alpha and Beta are both engaged in commerce in the United States, the proposed acquisition clearly is subject to section 7 of the Clayton Act, which prohibits mergers and acquisitions that may substantially lessen competition or tend to create a monopoly "in any line of commerce . . . in any section of the country."[130]

The Department's first step in analyzing the likely competitive effects of this merger would be to define the relevant market or markets that would be affected by the merger. As discussed in Part I of these Guidelines, a market is formally defined as a group of products or services ("product market") and a geographic area ("geographic market") as to which a hypothetical monopolist (that is, the only current and future seller of a product or service in an area) could profitably raise price significantly above the prevailing level.

Product Market

To define the relevant product market (or markets) that would be affected by this merger, the Department would begin by considering separately each product (narrowly defined) sold by Alpha and Beta in the United States. The Department would then ask what would happen if a hypothetical monopolist of that product imposed a significant and nontransitory increase in price (usually five percent for one year). If the price increase would cause so many buyers to shift to other products that it would not be profitable to impose, then the Department would add to the product group the product that was the next best substitute and ask the same question again until a group of products had been identified with respect to which a hypothetical monopolist would impose a significant and nontransitory price increase.[131] Ultimately, this process would identify all products with which the products sold by Alpha and Beta do or would compete in response to a significant and nontransitory price increase.

Of course, existing buyers might differ in their ability to use particular substitute products and the ease with which they could substitute those products for the product of the merging firms. Therefore, even though an across-the-board price increase might cause such significant substitution that it would not be profitable, if sellers could discriminate in the prices they charged to different groups of buyers, then sellers might be able to raise price only to buyers who could not easily substitute away. If such price discrimination were possible, the Department would consider defining additional, narrower product markets consisting of particular uses of the product as to which a hypothetical monopolist could exercise market power.[132]

X comprises the relevant product market in this case. Under the facts of this case, Alpha and Beta each produce only X, and there are no known substitutes for X for any group of buyers.

Geographic Market

After defining the relevant product market, the Department would next define the relevant geographic market. The purpose of defining a relevant geographic market is to establish a geographic boundary that roughly separates producers that are important factors in the competitive analysis (that is, that would undercut collusion) from those that are not.

To define the relevant geographic market in this case, the Department would begin by considering Alpha's locations (or the location of each of its plants) in the United States [133] and asking what would happen if a hypothetical monopolist imposed a significant and nontransitory increase in the price of X at that location. If so many buyers would shift to X produced in other areas that the price increase would not be profitable, then the Department would add the location from which production would be the next best substitute and ask the same question again.[134] Ultimately, this process would identify all areas, foreign and domestic, in which producers do compete or would compete with Alpha in response to a significant and nontransitory increase in the price of X.

Although direct evidence of the likely effect of a future price increase might sometimes be available (for example, in the form of evidence as to how consumers have responded to price increases in the past), the Department normally would infer that effect from reliable circumstantial evidence. In evaluating geographic substitutability, the Department would consider all relevant evidence, but would give particular weight to shipment patterns, evidence that U.S. consumers had actually considered shifting their purchases of X to producers located in other areas in response to changes in competitive variables, differences or similarities in price movements over a period of years that are not explainable by parallel changes in factors such as the cost of inputs, transportation and local distribution costs, and excess capacity of producers outside Alpha's location.[135]

Of course, buyers might differ in the ease with which they could shift to products produced outside of Alpha's location. As in the case of product market definition, if sellers could discriminate in the prices they charged to buyers in different locations, then the Department would consider defining additional, narrower geographic markets in which a hypothetical monopolist could exercise market power.[136]

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[130] 15 U.S.C. 18 (1982). Section 7 of the Clayton Act applies to a transaction if the parties are engaged "in commerce or in any activity affecting commerce." *Id.* An acquisition may also be challenged under section 1 of the Sherman Act, 15 U.S.C. 1 (1982), which prohibits contracts, combinations, and conspiracies "in restraint of trade or commerce among the several States, or with foreign nations." An anticompetitive merger may be challenged under section 1 if it would have a "direct, substantial and reasonably foreseeable" effect on U.S. domestic or import commerce. *See* 15 U.S.C. 7 (1982). The Department's substantive analysis is the same under both section 7 and section 1. *See* Merger Guidelines section 1.

[131] *See* Merger Guidelines section 2.11. Under some analytical approaches, production substitution (the ability to shift the use of production and distribution assets from producing and selling one product to producing and selling another) is reflected in the description of the relevant product market. The Department, however, defines the relevant product market by reference to demand substitution and accounts for production substitution when it identifies firms in the relevant market. *Id.* at section 2.21 & n.9, and I.B.2., *supra.*

[132] *See* Merger Guidelines section 2.13. Price discrimination requires that sellers be able to identify those buyers and that other buyers not be able profitably to purchase and resell the product to them. *Id.* at n.8.

[133] Because a firm can compete at the same time in a number of economically discrete geographic markets, it is possible that Alpha and Beta also compete in markets in which U.S. consumers do not participate. For example, they may compete in Japanese markets. Because the Department is concerned about U.S. consumer welfare, it would not be concerned about the merger's competitive effects in those markets.

[134] *See* Merger Guidelines section 2.31.

[135] *Id.* at section 2.32.

[136] *Id.* at section 2.33. A U.S. Department of Defense requirement that contractors use X produced in the United States would preclude U.S. contractors from shifting to X produced outside the United States in response to a price increase in the United States, at least for military applications. Foreign-produced X might still be a supply alternative for civilian aerospace applications of X, however. If that were the case, the Department would likely define a national market for the sale of

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Geographic price discrimination against a group of buyers is more likely to occur when other buyers cannot easily purchase and resell the relevant product to the group of buyers. Such arbitrage is particularly difficult where the product is sold on a delivered basis and where transportation costs are a significant percentage of the final cost.[137]

In this case, the facts that Beta and other producers in Japan, the EEC, and Brazil currently account for approximately 40 percent of X consumption in the United States and X imports from those countries have been rising suggest that U.S. consumers would shift to X produced by firms in those areas in response to a price increase in the United States. This would not necessarily be true in all cases where there are some imports, however. For example, foreign firms might have difficulty establishing reputations for quality and service and/or distribution and marketing networks in the United States that would be necessary to expand their sales, they might already be operating at full capacity, or exchange rates might be unfavorable.

Foreign firms may also be prevented by trade restraints from expanding their sales in the United States. Such restraints, however, would not cause foreign competitors to be excluded from the relevant market. Instead, the effect of such restraints in limiting the supply response of foreign firms would be considered in assigning market shares to affected foreign firms and in interpreting market share and market concentration data. As explained in greater detail in Case 2 of these Guidelines, the Department would heavily discount existing imports by foreign firms if import restraints would prevent those firms from responding to a price increase in the United States. Assuming no significant incidence of arbitrage, the inclusion of actual import sales in the market could significantly overstate the competitive check provided by foreign firms and, therefore, understate the likelihood of anticompetitive pricing following the merger.

Identifying Firms in the Relevant Market

The Department would include in the relevant market all firms that currently sell X in the market plus all firms that could easily and economically begin selling X in the relevant market using existing production and distribution facilities within one year of a significant price increase.[138] It is important to note that firms that could readily convert their facilities to produce X within one year might nevertheless find it difficult to market or distribute X in the United States, or for some other reason might find the substitution to be unprofitable. The Department would not include those firms in the relevant market. The Department might, however, consider their competitive significance (along with the competitive significance of firms that would not be included in the market because they must construct significant new facilities) in evaluating the likelihood of new entry in response to a domestic price increase.[139]

Assigning Market Shares

The Department normally would include in the relevant market the total sales or total capacity of all domestic firms (or plants) in the market, unless the facts indicated that total sales or capacity would overstate the competitive significance of a particular firm or group of firms.[140] If some portion of a firm's output would not be used to respond to a price increase (because it was already contractually committed, for example), then the Department might exclude that portion of the firm's output from the market.[141] Market shares would be expressed either in dollar terms (through the measurement of sales, shipments, or production), or in physical terms (through the measurement of sales, shipments, production, capacity, or reserves). As a practical matter, the availability of data would determine which measurement base the Department used. If it had a choice, however, the Department would use dollar sales or shipments if X was a branded or relatively differentiated product. It would use capacity, production, or reserves if X was a relatively homogeneous and undifferentiated product.[142]

As to foreign firms, if market shares generally were to be assigned on the basis of dollar sales or shipments, the Department would count in the market dollar sales in,[143] or shipments to, the relevant market. If market shares generally were to be assigned on the basis of capacity, reserves, or production, the Department would count in the market foreign capacity, reserves, or production likely to be devoted to the relevant market in response to a price increase.[144] Total foreign capacity would not be counted in the market if a foreign firm lacked specialized distribution facilities needed to supply additional demand in the United States. In addition, the Department might use current shipments for foreign firms if the Department were unable to obtain adequate data to quantify reliably the amount of capacity, reserves, or production that would be devoted to the United States in response to a price increase.[145] Finally, the Department might assign a single, aggregate market share to a country or group of countries if there were insufficient data available to allocate shares between individual firms or if firms in that country or group of countries coordinated their production or sales into the United States.[146]

Interpreting and Assessing Market Data

In some circumstances, current market shares calculated as described above may still either overstate or understate the competitive significance of foreign firms. Import restraints, for example, might cause current import sales and shipment data to overstate the future competitive significance of foreign firms.[147] Conversely, a lack of data concerning foreign capacity might cause the Department to use market share data that understate the true competitive significance of foreign competitors.

If current market share data would give a distorted view of the market, the Department would consider qualitative evidence relating to the competitive significance of foreign competitors in interpreting the significance of such data.[148] Thus, for example, despite the

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X for U.S. military applications and a second market for the sale of X for civilian applications (which might be an international market), unless producers of X were unable to discriminate in the price they charged to purchasers for military use and purchasers for civilian use.

[137] *Id.* at n.11.

[138] *See* Merger Guidelines section 2.21. Firms that would need to make significant modifications to existing facilities or to construct new facilities to produce and sell X would not be included in the relevant market. Their role in constraining an anticompetitive price increase would be considered in evaluating ease of entry into the relevant market generally. *Id.* at section 3.3.

[139] *See* Merger Guidelines section 2.21.

[140] *See id.* at section 2.4.

[141] *Id.* Whether and to what extent the Department would exclude such output from the market would depend on the extent to which that output could either be resold to buyers in the relevant market or would free up the output of other producers to be sold in the relevant market.

[142] *See* Merger Guidelines section 2.4.

[143] If varying exchange rates made comparable dollar calculations for firms in different countries difficult, the Department might use unit volume sales instead of dollar sales. *Id.* at section 2.4 & n.12.

[144] The Department's treatment of import quotas that constrain the ability of foreign producers to increase their exports to the United States is discussed in Case 2 of these Guidelines.

[145] *See* Merger Guidelines section 2.4.

[146] *Id.*

[147] *See* discussion in Case 2.

[148] *See* Merger Guidelines section 3.23.

inability to quantify precisely the supply response of foreign competitors, the Department would consider strong qualitative evidence that there was significant worldwide excess capacity that could readily be devoted to the United States in response to a post-merger price increase.[149]

Competitive Analysis

In analyzing the likely competitive effects of this merger, the Department would focus first on the level of post-merger concentration in the relevant market and the increase in concentration that would result from the merger as measured using the Herfindahl-Hirschman Index ("HHI").[150] If concentration in the relevant market for X would remain low after the merger (for example, if ten equally-sized firms would remain in the market), or if concentration would be only slightly increased, the Department would conclude without further detailed examination that the merger posed no significant threat to competition.[151] Otherwise, the Department would proceed to examine other factors bearing on whether the merger would likely result in market power.

The HHI thresholds set forth in the Department's Merger Guidelines are not bright line tests. A merger in a highly concentrated market may result in absolutely no ability to exercise market power if any attempt to restrict output and/or raise price would be frustrated by new entry or expansion by fringe firms or if other factors would make successful collusion implausible.[152] In addition, efficiencies that could only be achieved through the merger may be so great that, despite its anticompetitive potential, the merger's net effect would be to benefit U.S. consumer welfare. The parties to the merger would have the burden of establishing such efficiencies on the basis of clear and convincing evidence.

In considering whether efficiencies justify condoning an otherwise potentially anticompetitive merger, the Department would compare the estimated cost savings from the claimed efficiencies (less the cost of consolidating the operations of the merging firms) against the expected harm to competition that might result from the merger. In general, the Department would require a greater level of expected efficiencies as the level of anticompetitive risks posed by the merger increased. The Department would consider such efficiencies as economies of scale, better integration of production facilities, plant specialization, and lower transportation costs. The Department would also consider the reduction of general selling, administrative and overhead expenses, although these types of efficiencies, as a practical matter, would be more difficult to prove. The Department would not consider claimed efficiencies if comparable savings reasonably could be achieved through other, less anticompetitive, means.

Case 2—Merger Analysis Involving Trade Restraints

The facts of this case are the same as the facts in Case 1, plus the following facts. Japanese producers of X are subject to a voluntary export restraint ("VER") limiting the quantity of their X exports to the United States. Shipments from the EEC are subject to binding U.S. import quotas, some of which limit X imports to a fixed quantity (i.e., fixed quotas), and some of which limit X imports to a percentage of U.S. production (i.e., percentage quotas). X imports from Brazil are subject to a tariff that was imposed as a result of a countervailing duty proceeding under the U.S. trade laws.

Discussion

The VER, quotas, and tariff would affect the way the Department assigns and interprets market shares and market concentration data in this case. Foreign competitors would not be excluded from the relevant market solely because their sales in the United States are subject to quotas or VERs. That is because it is difficult to assess the effectiveness and longevity of such restraints and to measure the likely offsetting supply responses of producers that are not subject to the restraints. A restraint that applied only to the EEC, for example, might have only a limited effect on the extent of foreign competition faced by domestic firms if non-EEC firms could readily shift shipments to the United States from countries that do not limit EEC imports or if they could purchase X from EEC firms and resell it in the United States. Given the limitations on available data, it often is impossible to quantify the precise effect of trade restraints.

Nevertheless, the Department would recognize in this case that Japanese and EEC firms that are subject to an effective and binding restraint[153] could not increase their shipments to the United States in response to a price increase by domestic producers. They therefore could not constrain a domestic price increase. In fact, in the case of an effective, binding percentage quota, a reduction in domestic production would actually lead to reduced imports by foreign firms subject to the quota, making successful collusion among domestic firms more likely.[154]

The Department would consider the supply-restraining effect of the EEC quotas and Japanese VER in assigning market shares and interpreting market share and market concentration data. First, the Department would not assign to the EEC and Japanese firms market shares that exceeded the level of shipments that the quotas or VER permitted those firms to make.[155] Second, the Department would consider the impact of the quotas and VER in assessing the significance of market concentration data calculated on the basis of those market shares.

To the extent that actual sales or shipments by EEC and Japanese firms overstated their future competitive significance because the restraints limited the ability of those firms to expand shipments in response to a price increase in the United States, concentration data based on those sales or shipments would tend to understate the risk of anticompetitive harm. For example, if a cartel of domestic producers restricted their output of X in order to drive up prices in the United States, EEC firms bound by the percentage quota would be forced to reduce their U.S. shipments along with the domestic cartel. Therefore, although EEC firms would be assigned market shares up to the amount permitted to be shipped to the United States under the current quota level, their competitive significance would be heavily discounted.[156]

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[149] *Id.*

[150] As explained in Part I of these Guidelines, the HHI is calculated by summing the squares of the individual market shares of all firms included in the relevant market. *See* Merger Guidelines section 3.1. The maximum possible HHI, which would result if one firm accounted for 100 percent of a market, is 10,000. *Id.* at n.14.

[151] *Id.* at section 3.11. *See also* discussion at I.B.2., *supra.*

[152] *See* Merger Guidelines sections 3.3, 3.4; *see also* discussion at I.B.2., *supra.*

[153] An "effective" trade restraint is one that cannot be substantially avoided through diversion and arbitrage. A trade restraint is "binding" if firms would sell more than the restraint ceiling if the restraint did not exist. A restraint is not binding if, for example, although it would allow firms to ship 100 units of a product to the United States, those firms currently ship only 60 units.

[154] Merger Guidelines at section 3.23.

[155] *Id.* at section 2.4.

[156] In the extreme situation where there was an effective, binding trade restraint that placed a fixed or percentage limitation on imports from all or virtually all foreign sources, foreign firms would usually be accorded little, if any, competitive significance in the Department's analysis. *Id.* at section 3.23 & n.19.

Similarly, if the VER in this case would prevent Japanese firms from expanding their shipments to the United States, current U.S. sales by Japanese firms would tend to overstate their competitive significance. This does not mean that the Department would discount Beta's market share, however. The purpose of discounting the market shares of foreign firms that are subject to import restraints is to recognize that those firms would not inhibit the exercise of market power by domestic firms. A merger between Alpha and Beta, on the other hand, would increase the likelihood of successful collusion by domestic firms by making such collusion more profitable—following the merger, a domestic cartel would control a greater percentage of sales in the relevant market.

If Brazilian firms have been shipping X subject to the tariff into the United States, the tariff by itself would not likely inhibit Brazilian producers in responding to a significant and nontransitory price increase in the United States. If the tariff were prohibitive, however, such that Brazilian firms were not currently selling in the United States, then those firms would be included in the market only if a price increase would make shipments to the United States under the tariff profitable.

Case 3—Acquisition of a Foreign Potential Competitor

The facts of this case are the same as the facts in Case 1, except that neither Beta Corporation nor any other foreign producer of X currently sells X in the United States. It is assumed that the geographic scope of the relevant market is limited to the United States. It is further assumed that it would take Beta at least 18 months to establish sufficient distribution facilities to begin selling X in the United States, if it chose to do so.[157]

Discussion

Because Beta does not compete in the U.S. market for X, this merger could have a significant anticompetitive effect only if Beta would enter the market independently in the near future if it did not merge with Alpha,[158] the U.S. market for X were very highly concentrated, and Beta were one of only a very few other firms capable of entering the U.S. market for X in response to an anticompetitive price increase. Even if the U.S. market for X were very highly concentrated, eliminating only one of several potential entrants would not have any significant anticompetitive effect.

In determining whether Beta actually would enter the U.S. market for X independently (or through a "toe-hold" acquisition) but for this merger, the Department would consider evidence that Beta actually intended to enter the market (including, for example, internal management studies, expansion plans, actual investments and other steps toward entry), past attempts by Beta to enter the market, and whether independent entry would be profitable.

Even if Beta would enter the U.S. market for X independently if it did not merge with Alpha, the Department would be concerned about the competitive impact of the merger only if the U.S. market for X were very highly concentrated (that is, if the HHI exceeded 1800).[159] In that case, the Department would ask whether Beta was one of only a very few firms capable of entering the market (for example, because few or no other firms possessed technology needed to enter the market). If that were the case, then the Department would consider whether the merger would result in significant integrative efficiencies that could only be achieved through the merger and that would outweigh any threat of anticompetitive harm to U.S. consumers.[160]

Case 4—Merger of Two Foreign Firms

Beta Corporation and Delta Corporation are among the leading diversified electronics companies in Country A. They are the two most significant producers outside the United States of product X, a highly advanced and expensive electronic device with important and unique capabilities. Both companies' facilities for producing X are located in Country A. Beta and Delta together supply approximately 60 percent of X consumption in the United States, accounting for more than $110 million in sales. Each company has at least $15 million (book value) in assets located in the United States, although none of those assets are used to produce or sell X. Beta and Delta each make X sales in the United States through agreements with independent distributors.

Beta has announced that it intends to purchase all of the stock of Delta. After conducting a preliminary investigation, the Department has determined that there is a relevant U.S. market for the sale of X that includes Beta and Delta as sellers. That market is highly concentrated (the post-merger HHI would significantly exceed 1800 points), and concentration will increase substantially as a result of the merger (i.e., by more than 100 HHI points). It therefore appears that the merger may have an anticompetitive effect in the United States unless other factors, such as ease of entry into the market, would make the exercise of market power unlikely or unless efficiencies resulting from the merger would offset any potential anticompetitive effect. Although both Beta and Delta also sell other products in the United States, it does not appear that the merger could have an anticompetitive effect with respect to any of those other products.

Discussion

Because Beta and Delta both sell X in the United States, the merger clearly is subject to section 7 of the Clayton Act. The Department's Merger Guidelines explain when the Department ordinarily would challenge a merger or acquisition under section 7. That analysis is described in Part I.B.2., supra, and is illustrated in Cases 1, 2, and 3.

The U.S. antitrust laws represent a fundamental and important national policy that generally must be protected when U.S. commerce is significantly affected, even when doing so requires bringing an enforcement action against conduct or transactions that occur outside the United States. Nevertheless, applying the U.S. antitrust laws to such conduct or transactions can sometimes conflict with the legitimate interests of other nations. As a matter of comity and in the exercise of its prosecutorial discretion, the Department considers such interests in deciding whether to challenge a transaction involving foreign firms.[161]

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[157] Firms that could easily and economically begin selling in the United States within one year of a significant and nontransitory price increase would be included as competitors in the relevant market. *See* Merger Guidelines section 2.21.

[158] Applying a more speculative test would insulate inefficient management from the threat of takeover without necessarily inducing independent entry and would thus lead to decreased consumer welfare. *See, e.g.*, B.A.T. Indus. Ltd., [1983–1987 Transfer Binder-FTC Complaints and Orders] (CCH) ¶ 22,218 (FTC Dec. 17, 1984).

[159] *See* Merger Guidelines section 4. Even in that case, the Department would not likely challenge the merger if Alpha had a market share of five percent or less (i.e., if it were a "toe-hold" merger). Given the insignificant role that small firms usually play in collusive interactions, a merger between a potential entrant and a firm with only five percent of the market may have the same competitive effect as new entry and may, in effect, merely convert a fringe firm into a significant competitive factor in the market. *Id* at section 4.134.

[160] *Id. at* section 3.5. *See also* discussion of efficiencies, *supra*, at I.B.2.

[161] Indeed, the United States is committed to considering the legitimate interests of other nations in accordance with recommendations of the Organization of Economic Cooperation and Development (OECD) and bilateral agreements with several foreign governments. *See* n.1, *supra*.

The Department would not challenge the merger in this case, notwithstanding any possible anticompetitive effect the merger might have on U.S. commerce. Since both of the merging firms are foreign and all of their assets involved in producing and distributing X are located outside the United States, it would be very difficult, if not practically impossible, to obtain effective relief that would preserve competition in the United States.

This does not mean that the Department would never challenge a merger between foreign firms that would have a substantial anticompetitive effect in the United States, however. The Department might reach a different conclusion in this case, for example, if either Alpha or Beta had facilities used to produce X located in the United States, even though both had their corporate headquarters and most of their assets outside the United States. In that case, the Department would probably request additional information concerning the likely competitive effects of the merger, using procedures under the Hart-Scott-Rodino Act, CIDs, or informal requests, as appropriate. If the Department concluded after reviewing such information that the merger would be anticompetitive, then the Department would likely challenge the merger. If X production facilities belonging to Alpha or Beta located in the United States would constitute a viable business standing alone or if acquired by another company, the merger might be permitted to go forward conditioned on the divestiture of all or a portion of those facilities to a suitable buyer approved by the Department. The Department might seek the views of the government of Country A concerning the impact of various alternative remedies on that country's national interests.

Hart-Scott-Rodino Premerger Notification Requirements

Foreign firms that have all of their assets used to produce and sell the relevant product located outside of the United States (and the merger of which therefore would not be subject to challenge by the Department under the foregoing analysis) might still be required by the Hart-Scott-Rodino Act to file premerger notification with the Department and the FTC. An acquisition by one foreign corporation of the stock of another foreign corporation is exempt from the premerger notification requirements of that Act only if (i) the acquisition would not confer control of a U.S. issuer having annual net sales or total assets of $25 million or more, or of any issuer with assets located in the United States having a book value of $15 million or more; or (ii) aggregate annual net sales of the merging firms in the United States are less than $110 million and the aggregate book value of their assets in the United States is less than $110 million.[162] In this case, neither exception is satisfied. The acquisition of Delta's stock would give Beta control over Delta's assets in the United States, which have a book value of more than $15 million, and the combined U.S. sales of Beta and Delta exceed $110 million. The parties would therefore be required to file premerger notification under the Hart-Scott-Rodino Act.

Case 5—Joint Bidding

Several U.S. electrical equipment manufacturers and engineering firms have established a consortium for the purpose of submitting a bid on an extremely large project in Country A to develop a nationwide system of hydroelectric power plants. The consortium includes three of the ten largest U.S. equipment manufacturers and three of the ten largest U.S. engineering firms. No other American or foreign firms have been invited to join the consortium. Four similar consortia supported by the Japanese, British, Korean, and German governments, respectively, are also preparing bids.

The U.S. parties have formed the consortium because a smaller group would not have the technical capabilities needed to carry out the project and a substantial portion of most members' resources is already committed to contracts for sales and construction work in the United States and other countries. The project will require at least ten years to complete.

Country A is financing the project through a 30-year loan from the United States government. The interest rate on the loan is substantially below the current commercial rate of lending and payments on the loan do not come due until the fifteenth year. As a result, the present value of the expected future repayment of the loan is less than half of the value of the project. Because of the importance of this project, several senior U.S. government officials have been strong supporters of the U.S. consortium.

Discussion

This case involves issues of joint venture analysis. As discussed in Part I.B.3., joint ventures often play an important role in promoting the growth and international competitiveness of the U.S. economy by achieving significant integrative efficiencies and adding new capacity to the market. Legitimate joint ventures—those that involve significant economic integration of members' operations beyond the mere coordination of their pricing and output decisions—are judged under a rule-of-reason analysis. Only those joint ventures that create anticompetitive risks that are not outweighed by substantial efficiencies resulting from the joint venture are proscribed. Normally, the Department would not be concerned about this consortium's effect on competition for an overseas project.[163] In the absence of U.S. government funding (discussed below), the Department would not challenge a joint venture—or even outright bid-rigging—by U.S. firms on a purely foreign project on the basis of the competitive effects of such conduct in a foreign market.

In this case, however, the U.S. government is substantially funding the overseas project through a noncommercial rate loan.[164] As a general matter, the Department considers there to be a sufficient effect on U.S. interests to support the assertion of jurisdiction where, as a result of its payment or financing, the U.S. government bears more than half of the cost of the transaction.[165] In that case, any anticompetitive conduct with respect to the transaction would have the primary effect of harming U.S. taxpayers. In this case, since the present value of the expected future repayment of the loan is less than half the value of the transaction, more than half of the

[162] *See* 16 CFR 802.51.

[163] *But see* discussion of potential "spill-over" effects in markets in which U.S. consumers participate, *infra*.

[164] *See e.g.*, United States v. Concentrated Phosphate Export Ass'n, 393 U.S. 199 (1968) (exports funded by U.S. AID Program were not "exports" under Webb-Pomerene Act and were thus subject to the Sherman Act); *see also* United States v. Standard Tallow Corp., 1983-1 Trade Cas. (CCH) ¶ 67,913 (S.D.N.Y. 1983) (sales of tallow to Egyptian government funded by U.S. AID Program).

[165] For the purpose of determining when more than half of the cost of a transaction is borne by the U.S. government, the Department applies the standards used to determine whether export conduct is eligible for certification under the Export Trading Company Act of 1982, 15 U.S.C. 4011–4021 (1982). *See* ETC Guidelines, 50 FR at 1799–1800. The requisite U.S. government involvement could include the actual purchase of goods by the U.S. government for shipment abroad, a U.S. government grant to a foreign government that is specifically earmarked for the transaction, or a U.S. government loan specifically earmarked for the transaction that is made on such generous terms that it amounts to a grant. U.S. government interests would not be sufficiently implicated with respect to a transaction that is funded by an international agency for which the U.S. government does not supply a major portion of funding or a transaction in which the foreign government receives non-earmarked funds from the United States as part of a general government-to-government aid program.

cost of the transaction is being borne by the U.S. government.

Assuming that the U.S. government is funding the project, the initial question in this case is whether the consortium is a legitimate joint venture that should be analyzed under a rule of reason, or a naked restraint of trade that should be treated as per se unlawful. This consortium would be treated as per se illegal if it were a sham designed to disguise naked bid-rigging. There is no reason to believe that the consortium in this case is a sham, however. The consortium appears to be intended to achieve legitimate integrative efficiencies. It does not simply eliminate competition among consortium members; rather, it enables them to compete more effectively against other consortia by combining complementary assets.[166]

Step 1—Joint Venture Market

If, as in this case, the joint bidding consortium was not a sham, the Department would first determine whether the consortium would have an anticompetitive effect in the market in which the consortium will compete. It appears from the facts of this case that no single consortium member or smaller group could be a credible bidder on the project. If that were true, then the consortium would not eliminate any competition among bidders and this case would raise no antitrust concern with respect to competition for the project (although, as discussed below, the Department might be concerned about anticompetitive spill-over effects in U.S. markets).

If the consortium did eliminate competition among its members (that is, if some subset of the consortium could credibly have bid on the project), then the Department would analyze the consortium's competitive effects as though the consortium were a merger of the consortium members in the market in which the consortium will compete. Assuming that the consortium will compete only for the project in this case, the relevant market would likely be defined as the group of consortia willing and able to perform the project.

As in merger analysis, the Department would focus first on the level of concentration in the market after the consortium is formed and the increase in concentration as a result of forming the consortium. If each of the five bidding consortia is a comparable participant in the market (that is, if each faces comparable costs and is equally able to perform the contract), then the Department would consider each of the consortia to be equal in size and competitive significance.

The Department would measure concentration in the market by dividing the number of bidders into one and multiplying by 10,000 (the HHI of a single-firm market).[167] If a single team of one U.S. engineering firm and one U.S. equipment manufacturer could credibly bid on and perform the project, for example, then the consortium would reduce the number of bidders in the market from seven (three U.S. bidding consortia and four foreign bidding consortia) to five. Market concentration with seven bidders would be approximately 1428, and market concentration with five bidders would be 2000 and an increase in concentration of more than 50 points. The consortium would result in a highly concentrated market.[168] The Department would therefore proceed to consider other relevant factors bearing on the likelihood that the U.S. consortium would be anticompetitive.

In particular, the Department would determine whether there were many other potential bidders for the hydroelectric power plant project. A market may be competitive even if there are only five, or even two, actual bidders if there is a large pool of potential bidders. The number of actual bidders may be limited by the costs of bidding (e.g., the cost of forming the consortium, formulating the bid, and, perhaps, qualifying to bid). If the costs of bidding are substantial, then only a few potential bidders would be expected to bid on a given project. The Department would therefore not be concerned about the U.S. consortium in this case if it appeared that there were many other potential bidders that could have competed for the project; five bidders would simply be the market's optimal number of actual bidders.

Although the analysis of this consortium may seem complex, it is useful to keep two points in mind. First, if the project were purely foreign, without the involvement of substantial U.S. government funding, then the Department would not challenge the consortium regardless of the circumstances. Second, even if antitrust analysis were required because of, for example, substantial U.S. government funding, it would often be clear that a particular joint venture is reasonably required to maximize the competitiveness of the joint venture members.

Step 2—Spill-Over Markets

The Department would next determine whether the consortium or any of its ancillary restraints would likely have any anticompetitive "spill-over" effects in other markets in which the consortium members do or would compete. Under certain circumstances, the consortium in this case might facilitate collusion among members with respect to the price and/or output of electrical equipment or engineering services or on bidding for projects in the United States. In formulating the consortium's bid, for example, consortium members might exchange sensitive business information that could be used to coordinate prices or output in the United States.

Such spill-over effects may be of no concern if none of the information the consortium members might share about the hydroelectric power plant project in Country A would be relevant to competition among consortium members in the United States, or if the consortium included safeguards against anticompetitive spill-over effects resulting from the exchange of sensitive information. For example, the consortium might include safeguards designed to prevent the disclosure of sensitive business information to persons that are actively engaged in managing the competitive activities of individual consortium members in spill-over markets.[169] Of course, even if such safeguards were not used, the consortium would raise no significant concerns if the relevant spill-over

[166] Such a sham might exist if the consortium members had originally intended to bid separately but agreed to bid collectively in order to hold the bids down and then to allow one pair of engineering firm and equipment manufacturer to perform the contract and provide some quid pro quo to the other members. The true intention of the parties would be covert and the consortium would be merely diversionary. The consortium would not have been formed to achieve efficiencies from the economic integration of the parties' operations; rather, its goal would have been to reduce competition among the bidders.

[167] If the U.S consortium would continue to compete on other U.S. government funded projects and/or projects in the United States, then the Department's analysis might be different. For example, if potential competing bidders were capacity-constrained, such that they would not be available to compete on all projects, then the Department would have to take that into account in assigning market shares and measuring concentration in the relevant market. The Department would also likely be more concerned with the possibility of anticompetitive collusion if there were many repeated bidding opportunities, since in that case it might be easier to coordinate a bid-rigging cartel.

[168] *See* n.58, *supra*.

[169] *See* nn.75–80 and accompanying text, *supra*. The existence of such safeguards, of course, would not preclude the Department from prosecuting any unlawful agreement that resulted notwithstanding such precautions (perhaps because the parties failed to observe safeguards).

market were not concentrated, the consortium members represented a small share of the spill-over market, entry into the spill-over market were easy, or other factors would make successful collusion in the spill-over market unlikely.

If the consortium did raise any significant antitrust concern, the informal encouragement given to the consortium or its members by U.S. government officials would not confer any kind of antitrust immunity. If bidding consortia and other joint ventures engaged in exporting goods or services desire greater certainty about their potential antitrust liability, they can seek to obtain a business review from the Department or a certificate of review under the Export Trading Company Act.[170] Export conduct is not eligible for certification under the Export Trading Company Act, however, if the U.S. government bears more than half the cost of purchasing the exported goods or services.

Case 6—Research and Development Joint Venture

The first, third, and fourth largest producers of X-metal in the United States, which supply 35, 15, and 10 percent of U.S. X-metal consumption, respectively, have entered into an agreement with Beta Corporation, a British company that is one of the largest X-metal producers in the EEC. The parties plan to engage in joint R&D to develop a process for producing X-metal from sources other than the traditionally used X-ore. X is found in a variety of shales located throughout the world, but no one has found an economical way to produce X from these shales. Beta and several X-metal producers, including each of the U.S. parties to the agreement, are independently engaged in laboratory research activities. So far, none of this research has yielded a workable process or shown any promise of doing so.

Under the agreement, the parties will form a British company. Each party will own one-fourth of the shares of this company, and each will designate one-fourth of the members of the board of directors. Each of the venture members has agreed to conduct all of its R&D activities devoted to seeking new processes for producing X-metal from shale through this new British company. They have also agreed to provide the company with past and projected price and cost data relating to their production and sale of X-metal from X-ore.

The new British company will seek to obtain patents on any new process it develops. It will grant to the U.S. venture partners exclusive licenses to all patent rights and use of know-how in North America. Beta will be given similar rights to patents and know-how in the United Kingdom, other EEC countries, and all the British Commonwealth countries except Canada. The U.S. parties have agreed not to market X-metal produced using licensed technology in territory reserved to Beta. Beta has agreed not to sell X-metal produced using licensed technology in North America.

Discussion

As is the case with all international agreements, the Department's review of the agreement in this case would focus on the agreement's likely competitive effects in the United States. Although the joint venture's activities will be conducted overseas by the new British company, the agreement will directly affect R&D competition among firms that do or could produce and sell X-metal in the United States, as well as the sale of X-metal in the United States by Beta.[171]

The agreement in this case involves both horizontal and vertical restraints. First, the agreement to coordinate the R&D efforts of the parties should be analyzed as a joint venture that eliminates competition among horizontal competitors in a relevant R&D market. The licensing agreement should be analyzed as a vertical restraint.

Joint Venture Analysis. Joint R&D activities often have substantial procompetitive effects by promoting the development of new technologies, products, and processes that otherwise would not be available and that could substantially improve the efficiency of firms serving U.S. consumers. The specific benefits that can be derived from joint R&D include sharing the often substantial economic risks involved in R&D; increasing the efficiency of R&D efforts by exploiting economies of scale or scope beyond what individual firms could realize, or by pooling important information or complementary skills; and overcoming the "free-rider" disincentive to invest in R&D by including likely end-users of the R&D in undertaking the research efforts and sharing the costs. An R&D joint venture can also provide a low-cost means of transmitting information created by the venture, minimizing transactions costs, and allowing venture members to use information at its actual zero marginal cost.

NCRA. Congress formally recognized the procompetitive benefits of joint R&D when it enacted the National Cooperative Research Act of 1984 ("NCRA").[172] The NCRA, among other things, prohibits courts from comdemning a joint R&D venture on antitrust grounds unless the joint venture is proven to have anticompetitive effects in a properly defined, relevant market that outweigh the joint venture's procompetitive benefits.[173] The NCRA also limits the monetary relief that may be obtained in civil suits challenging conduct that is within the scope of notification filed by the joint R&D venture with the Attorney General and the FTC.[174]

The NCRA includes in the definition of joint R&D the patenting and licensing of the results of an R&D joint venture. It excludes (i) any exchange of competitively sensitive information among competitors "that is not reasonably required to conduct the research and development that is the purpose" of the venture; (ii) any agreement or conduct restricting competition among venture members with respect to producing or marketing products, processes, or services other than the intellectual property (e.g., patents or know-how developed through the joint venture; or (iii) any agreement or conduct restricting the sale, licensing, or sharing of intellectual property developed outside the joint venture or restricting or requiring participation in other R&D activities that is "not reasonably required to prevent misappropriation of proprietary information" that is contributed by any joint venture member or that results from the joint venture.[175]

Conduct excluded from application of the NCRA is not necessarily unlawful, of course. Unless a collateral restraint has no plausible connection to the legitimate conduct of the joint venture, it is analyzed under the rule of reason.[176]

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[170] 28 CFR 50.6 and 15 U.S.C. 4011–4021 (1982).

[171] Both section 7 of the Clayton Act and section 1 of the Sherman Act would apply to the formation of this joint R&D venture because of the acquisition of shares of the new British company, a person whose activities at least "affect" U.S. commerce. 15 U.S.C. 18. In addition, the licensing of technology produced by the joint venture to U.S. firms would occur "in commerce." The formation of the joint venture may be subject to the premerger notification requirements of the Hart-Scott-Rodino Act. *See* 16 CFR 801.40.

[172] Pub. L. No. 98–462, codified at 15 U.S.C. 4301, et seq. (1984). *See* I.A.4., *supra*.

[173] 15 U.S.C. 4303.

[174] 15 U.S.C. 4303(a). Joint R&D ventures within the scope of the notification also can recover attorneys' fees expended in successfully defending against a private antitrust suit.

[175] 15 U.S.C. 4301(b).

[176] *See* I.B.3., *supra*.

Nor would the fact that some excluded conduct was part of the joint venture agreement which result in the denial of benefits under the NCRA with respect to the remainder of the joint venture's activities that do fall within the Act's definition of R&D activity.

Rule-of-Reason Analysis

The rule of reason condemns only joint R&D activities that, on balance, are anticompetitive.[177] If no anticompetitive effectives are likely, the joint venture and its restraints are lawful; it is not necessary to inquire as to the joint venture's precise procompetitive benefits. On the other hand, the existence of possible anticompetitive effects does not automatically condemn the joint venture. The risk of anticompetitive effects must be weighed against any likely procompetitive benefits of the joint venture. As Congress has recognized, as a general matter, the greater the cost of R&D relative to a single firm's budgetary limits, or the greater the economies of scale that can be achieved through the jointly conducted R&D, the more likely is that the procompetitive benefits of joint R&D activity will outweigh any potential anticompetitive effects.[178]

As described in Part I of these Guidelines, the Department applies a two-step rule-of-reason analysis to R&D joint ventures.[179] First, the Department considers whether the joint venture would have a significant anticompetitive effect in the relevant market or markets in which the ventures will compete. Second, the Department considers whether the joint venture would serve as a mechanism to coordinate the restriction of output in other markets in which the venture members compete or might compete.

Step 1—Joint Venture Markets

Applying the principles set forth in the Department's Merger Guidelines,[180] the Department would first identify the relevant R&D market and firms competing in that market. The Department would include in the relevant R&D market all firms that, judged objectively, have the incentive and ability, either alone or cooperatively, to undertake R&D comparable to the R&D proposed to be undertaken by the joint venture in this case. The Department would consider, among other things, such firms' business objectives, facilities, existing technologies and technologies under development, and other relevant available assets. Firms would not have to be competitors in producing or selling X-metal to be included in the relevant R&D market. Moreover, because of the mobile nature of information, foreign R&D competitors would probably be significant competitive factors.

The Department generally would consider all possible comparable R&D efforts to be equal in size and competitive significance. As a general rule, an anticompetitive effect is unlikely where there are at least four comparable R&D efforts underway or where there is a substantial potential for such efforts by firms or groups of firms included in the market. While the actual or potential existence of four comparable R&D efforts creates a "safe harbor," however, the fact that there are fewer than four actual or potential R&D competitors does not necessarily mean that a particular R&D joint venture is anticompetitive. Fewer R&D competitors may provide adequate competition, particularly if the joint venture members can conduct R&D outside of the joint venture. Moreover, a joint venture that includes a large portion or even all of the competitors in an R&D market may be necessary in a particular case for successful R&D.[181]

Even if a merger of the joint venture members would give them the power to restrict the output of R&D, a joint venture may pose less anticompetitive risk than a complete merger. In this case, the venture members are precluded from engaging outside the joint venture in R&D into X-metal extraction from shale; however, they can continue to compete in the production of X-metal using other processes. Similarly, because the firms retain their independent management, the coordination necessary by the venture members to exercise market power would be more difficult than in the case of an outright merger.

Moreover, the restriction on the venturers' ability to engage in competing R&D is reasonably necessary to the successful operation of the venture, and the Department would weigh the potential anticompetitive effects of this restriction against its procompetitive benefits. The restriction is probably designed to avoid the threat that a venture member would "free ride" on the venture's efforts. Such free-riding could occur if a member used information provided by others to the joint venture in that member's own private R&D efforts and did not share the benefits of the R&D with other venture members. Without this restriction, firms might be reluctant to disclose information to the venture, thus significantly impeding the success of the venture.

Step 2—Spill-Over Markets. Next, the Department would determine whether the venture would likely have any anticompetitive spill-over effects in product or service markets in which the joint venture members currently compete. In this case, the venture members' exchange of competitively sensitive price and cost data relating to their X-metal production using existing technology might conceivably facilitate collusion with respect to the sale of X-metal unless adequate safeguards were implemented to prevent anticompetitive use of the information. The fact that the joint venture's activities are to be carried out through a separately incorporated entity is one such safeguard which might be supplemented by independent staffing of that entity and other steps to ensure that competitively sensitive information does not flow back to the venture members. Even if such safeguards were not used, however, the joint venture in this case would raise no significant spill-over concerns if entry into the relevant X-metal market were easy (it appears from the facts of this case that the X-metal market is highly concentrated) or other factors would make collusion in that market unlikely. The Department would also weigh the risk of anticompetitive spill-over effects against the procompetitive benefits of the joint venture.

Licensing Arrangement. If the joint venture itself is lawful, then the Department would next consider the competitive effects of the joint venture licensing arrangements. Under the joint venture agreement, the three U.S. members of the joint venture will be granted exclusive licenses to all patent rights and know-how developed by the joint venture. In addition, Beta has agreed not to sell X-metal produced using licensed technology in the United

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[177] This assumes, of course, that the R&D venture and its collateral restraints represent a legitimate integration of efforts to produce valuable R&D. A joint venture that was not formed to pursue R&D, but was formed merely to disguise a naked scheme to fix prices or allocate territories or customers for the sale of some product or service would be viewed as a sham, and might be prosecuted criminally. A collateral joint venture restraint that merely fixed the price of goods as to which the technology was of no importance or of only trivial importance to efficient production of those goods would also not be lawful.

[178] House Conf. Rep. No. 1044, 98th Cong., 2nd Sess., 1984.

[179] *See* I.B.3., *supra*.

[180] *See* Merger Guidelines section 2 and Cases 1, 2, and 3.

[181] House Conf. Rep. No. 1044, *supra* n. 178.

States. [182] The joint venture company is the licensor and the individual joint venture members are the licensees. These license restrictions are properly analyzed as vertical restrictions because, by the terms of the joint venture agreement, the joint venture participants are prohibited from competing with the joint venture in developing related technology.[183] The licensing restrictions should therefore be analyzed as described in Parts I.B.4. and I.B.5. and Case 12 of these Guidelines.

The licensing of techonlogy owned and developed by multiple parties should be treated no more harshly than technology owned and developed by a single entity. The license restrictions in this case would be found to be anticompetitive only if they would facilitate collusion among owners of competing technologies or exclude competing technologies from the market by "tying up" all or nearly all of the licensees capable of exploiting competing new technology. The granting of exclusive licenses generally does not raise a competitive issue because a technology owner has no obligation to create competition in its own technology. Here, in fact, there will be competition among the three American companies and other companies outside the joint venture using current technology or shale-extraction technology developed by others. Any competing shale-extraction technology can be licensed to X-metal producers outside the joint venture or even to the joint venture members themselves, since they are not prevented by the terms of the joint venture agreement from licensing competing technologies.

As is true with respect to all analysis under the rule of reason, the Department would not challenge the license restrictions in this case if they were not anticompetitive, without regard to the presence or absence of procompetitive benefits. If the restrictions posed a significant anticompetitive threat, the Department would then consider any offsetting procompetitive benefits. The Department would consider, for example, the benefits of exclusive licenses in providing incentives to licensees to develop and market products using the technology without fear from free-riders.

[182] This restriction is consistent with the policy underlying section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, as amended by 19 U.S.C. 1337a, which allow a U.S. process patent holder to obtain relief against the importation of products produced using a process covered by a valid U.S. process patent.

[183] To the extent that any horizontal restraint on technolgy development was an issue, it would be resolved in step 1 of the analysis.

Case 7—Distributing a Foreign Competitor's Product

Alpha Corporation and Beta Corporation are significant, but not dominant, manufacturers of machine tools in the United States and the Federal Republic of Germany, respectively. Neither company makes substantial sales in the other company's home country. Alpha has agreed to appoint Beta as its exclusive distributor in the EEC, and Beta has agreed to appoint Alpha as its exclusive distributor in North America. Both appointments will be for a period of five years.

Some of Alpha's and Beta's products are directly interchangeable in use. Most, however, are either complementary (that is, they can be used in conjunction with each other) or have special features that substantially differentiate them. Alpha and Beta recongize that neither company is likely to promote imports of the other that are directly interchangeable with its own products. But each believes that their total exports under this arrangement will be significantly greater than if an independent distributor were used. In addition, Alpha reasonably believes that the ability to offer a full line of machine tools by handling Beta's products will enable Alpha to compete more effectively against competing machine tool manufacturers in the United States.

Under the proposed distributorship arrangement, Alpha and Beta will each pay a predetermined price (based on factory costs), and will be free to resell the imported machine tools at whatever price they choose. In addition, Alpha and Beta have agreed that they will prohibit their distributors in other countries from re-exporting machine tools produced by either Alpha or Beta into the EEC or North America.

Discussion

The appointment of an exclusive foreign distributor by a U.S. firm does not by itself raise concern under the U.S. antitrust laws. Such an arrangement normally would not affect consumers in the United States. Where the parties are actual or potential competitors, however, a reciprocal distribution arrangement such as the one presented in this case raises at least the possibility that it might amount to an unlawful scheme to allocate markets between the parties or that it otherwise might adversely affect competition in a relevant market affecting U.S. consumers. This case therefore initially raises a question of characterization: should the distribution arrangement between Alpha and Beta be treated as per se unlawful market allocation between horizontal competitors, or should it be examined under a rule-of-reason analysis that recognizes the arrangement's potential procompetitive benefits?

The reciprocal distribution arrangement in this case does not appear to be a naked agreement to restrict output and/or raise price. Rather, the arrangement appears to involve an economic integration of the parties' operations (beyond simply the coordination of price and output)that may result in increased output.[184] Although Alpha and Beta both produce machine tools, some of which are directly interchangeable, their product lines appear to largely complementary. Moreover, Alpha reasonably believes that its ability to offer a full line of machine tools under the distribution arrangement will enable it to compete more effectively against other machine tool manufacturers in the United States. The fact that this arrangement is open and notorious makes it less likely (though not impossible) that the arrangement is designed to facilitate naked price-fixing.

The Department would therefore analyze the distribution arrangement under the rule of reason. Applying the principles and standards set forth in the Department's Merger Guidelines, the Department would first determine whether eliminating competition between Alpha and Beta would have an anticompetitive effect in a relevant market for the sale of machine tools to U.S. consumers.[185] If the complete elimination of competition between Alpha and Beta through merger would not be anticompetitive (for example, because existing competitors or new entrants would frustrate any attempt to exercise market power or because of procompetitive benefits that would outweigh any anticompetitive effects), then the distribution arrangement or restriction prohibiting Beta and its distributors from re-exporting Alpha's or Beta's machine tools also would not be anticompetitive.

If a merger of Alpha and Beta would be anticompetitive, then the Department would look more closely at the nature of the restrictions imposed by this distribution arrangement.[186] The

[184] *See* nn.45 and 46 and accompanying text, *supra.*

[185] *See* I.B.2., *supra.*

[186] Of course, a restriction that had no plausible connection to the efficient operation of the distribution arrangement, but was simply a naked attempt to restrict output and/or fix price, would be analyzed independently and might be subject to

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distribution arrangement may be its terms pose less of a risk of creating or facilitating the exercise of market power than would an outright merger between Alpha and Beta. For example, if there were no restriction against transshipping by Beta's worldwide distributors, any attempt by Alpha to exercise market power in the United States might be undercut by competition form Beta's distributors. Even with the transshipping restriction, the distribution agreement may not allow perfect coordination of the price and output of the two companies' machine tools in the United States. If that were true, then other factors (such as ease of entry or the procompetitive benefits of the arrangement) may establish that, on balance, the distribution arrangement would not be anticompetitive, even though a merger would be anticompetitive.[187]

Case 8—Exclusive Vertical Distribution Arrangements

As in Case 7, Alpha Corporation and Beta Corporation are significant, but not dominant, manufacturers of machine tools in the United States and the Federal Republic of Germany, respectively. The relevant market for the sale of machine tools is not highly concentrated. Although some of the machine tools produced by Alpha and Beta are directly interchangeable in use, most are complementary or substantially different. Beta makes substantial sales in the United States. It has appointed Delta Distribution Inc. as its exclusive distributor of machine tools in the United States. Beta chose Delta because of Delta's substantial experience and expertise in the promotion and sale of machine tools. Beta's other worldwide distributors are prohibited from selling Beta's machine tools in the United States or to firms that intend to transship Beta's machine tools to the United States.

For a number of years, Alpha has been selling machine tools in the United States through a large number of non-exclusive independent distributors, selling to whichever distributors sent in orders. During the period that it has employed this distribution method, Alpha's market share has gradually declined. To halt this decline, Alpha has recently selected Delta as its exclusive U.S. distributor. Alpha believes that Delta will more effectively distribute Alpha's brand of machine tools because of Delta's expertise and because, under Alpha's new distribution system, the exclusive right to distribute Alpha's products will result in better promotion and servicing of Alpha's tools. Alpha initially was conterned that Delta might be less aggressive in promoting Alpha's line of machine tools because Delta also distributed Beta's line. However, Alpha ultimately concluded that, since Beta's line largely complemented Alpha's line, both product lines would benefit if Delta could market both. Alpha prohibited Delta from distributing the machine tools of any other supplier of machine tools except for those of Beta, however. In selecting Delta, Alpha chose among several competing distributors.

Discussion

This case illustrates the use of two types of vertical nonprice restraints: the grant of an exclusive territory to a distributor and the requirement that a distributor deal exclusively with the products of a limited number of manufacturers. The appointment of an exclusive U.S. distributor (or a group of exclusive distributors, each with an exclusive territory that represents only part of the United States) by a manufacturer generally raises no significant antitrust concern. Indeed, such arrangements can substantially enhance interbrand competition. For example, granting distributors exclusive territories may encourage distributors to provide substantial promotion and post-sale services that are necessary to gain recognition for, or build up good will in, the manufacturer's brand by preventing other distributors that do not provide these services from "free-riding."[188] Under the rule of Reason, of course, the Department would challenge a vertical restraint only if it would have a significant anticompetitive effect in some relevant market, regardless of whether the parties have a procompetitive explanation for the restraint.

Exclusive Territories/Transhipping Prohibition. Under certain market conditions, widespread use of exclusive territories by leading manufacturers conceivably might facilitate collusion among distributors of competing manufacturers. Such collusion would be possible in this case, however, only if: (i) The relevant market for the sale of machine tools were very highly concentrated; (ii) distributors subject to exclusive territories accounted for a large portion of the market; and (iii) entry into distribution were difficult. Even then, a careful analysis of all relevant factors might indicate that Beta's use of exclusive territories would not facilitate collusion with respect to the output or price of competing brands of machine tools or, if it would, that the procompetitive benefits of Beta's distribution arrangement outweighed the risk of anticompetitive effects.

In this case, it is clear that the appointment of Delta as exclusive U.S. distributor by both Alpha and Beta would pose no significant risk of collusion. Because there are many machine tool manufacturers in the relevant market, coordinating and policing the pricing and output activities of those manufacturers would be very difficult, if not impossible, without an explicit agreement among them. Rival manufacturers would have an incentive to cheat by selling directly to consumers or by dealing with non-colluding distributors. Therefore, even if each machine tool manufacturer in the relevant market were vertically integrated into distribution or distributed through exclusive distributors, it would be extremely unlikely that the manufacturers could successfully develop, police, and benefit from a scheme to facilitate collusion at the dealer level.

Exclusive Dealing Requirement. Alpha's restriction on Delta's ability to deal with machine tool manufacturers other than Alpha and Beta also would not be anticompetitive. In fact, exclusive (or partially exclusive) distributorships generally pose no antitrust concern. Instead, they generally enhance efficiency and increase interbrand competition. For example, an exclusive dealing requirement may enable the manufacturer to protect its investment in services, such as advertising and training, provided to dealers, that the dealer might otherwise use to sell the goods of competing manufacturers. Exclusivity can also ensure that the dealer devotes optimal effort and attention to promoting the manufacturer's brand rather than that of a rival. In this case, because Beta's line of machine tools largely complements Alpha's line, the exclusivity arrangement might encourage Delta to promote both lines without divided loyalty to either.

Under certain market conditions, a restraint that required a distributor to deal exclusively in the product of one or a limited number of manufacturers conceivably might have the effect of excluding rival manufacturers from the market by denying them access to

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prosecution even though the reciprocal distribution arrangement itself and other restraints related to it were lawful. Thus, for example, the Department would not hesitate to prosecute a side agreement by the parties in this case covertly to fix the price of an unrelated product not covered by the distribution arrangement that they purported to sell in competition with one another.

[187] *See* I.B.3., *supra*, and Case 5.

[188] See I.B. 4., *supra*.

essential distribution facilities. Such an effect would be plausible, however, only if: (i) The manufacturing market were highly concentrated and leading manfacturing employed the same or very similar restraints; (ii) distributors subject to the restraint controlled a large share of the market; and (iii) entry into the distribution market were difficult. As with the threat of collusion, these three conditions are the minimum necessary (but not sufficient) conditions required to create a plausible risk of anticompetitive exclusion. Other factors, including the procompetitive benefits of the exclusive dealing arrangement, might indicate that the restraint is competitively neutral or even procompetitive.[189]

In this case, it appears that there are a number of distributors other than Delta with which competing machine tool manufacturers could deal. Moreover, the relevant machine tool market is not highly concentrated. Therefore, even if all existing distributors were subject to exclusive dealing arrangements (so that machine tool manufacturers seeking to enter the market would have to integrate into distribution or establish a new distributor), there could be no anticompetitive effect in the relevant machine tool market.

Case 9—A Multinational Operation

Alpha Corporation is a large, well-known multinational corporation headquartered in New York City. Alpha manufactures printing machines in New Jersey. It exports its printing machines only to Latin American countries. It uses overseas subsidiaries to manufacture and sell its products throughout the rest of the world. Although Alpha's patents on its printing machines expired years ago, Alpha and its subsidiaries collectively have retained a dominant position in most markets because of superior sales and service organizations, accumulated know-how, and low manufacturing costs.

The Alpha system of management involves a strong "profit center" concept. Individual subsidiaries are judged by their ability to develop sales in their assigned territories. Normally, when an order comes in to one Alpha subsidiary from the assigned territory of another, the recipient sends it on, or suggests that the consumer contact directly the subidiary assigned to the territory.

The Alpha group of companies comprises three subsidiaries. Alpha (U.K.) Limited manufactures Alpha products and sells them throughout the United Kingdom, the Republic of Ireland, and the Commonwealth, except Canada. Alpha (U.K.) was a wholly-owned subsidiary of Alpha when it was formed in 1954, but 40 percent of its stock is now publicly held as a result of a 1964 public stock offering. Beta Corporation is a wholly-owned Canadian subsidiary of Alpha that manufactures and sells Alpha products only in Canada. Alpha G.m.b.H., incorporated in the Federal Republic of Germany, manufactures and sells Alpha products in the Common Market countries other than the United Kingdom and the Republic of Ireland and all other countries except the Commonwealth, Canada, the United States, and Latin America. Alpha acquired Alpha G.m.b.H. in 1951 from four large individual investors. Alpha now holes 56 percent of the stock of Alpha G.m.b.H. The remaining 44 percent is evenly divided among the four original investors.

Alpha plans to sell an additional seven percent of its stock holdings in Alpha G.m.b.H., which would leave Alpha with 49 percent of the stock of Alpha G.m.b.H., but effective working control. Alpha is also negotiating to sell 50 percent of the stock of Beta Corporation to a Canadian corporation which purchases the stock of Canadian companies for investment purposes.

Discussion

This case involves the issue of intra-enterprise conspiracy. In *Copperweld Corp.* v. *Independence Tube Corp.*,[190] the Supreme Court held that, because a parent corporation and its wholly-owned subsidiary have a "complete unity" of economic interests, they are not independent actors capable of conspiring to restrain trade within the meaning of section 1 of the Sherman Act.[191] The Court declined to decide whether the same result would apply where a subsidiary is less than wholly-owned.[192] In the Department's view, however, the policies underlying the Sherman Act (as discussed in *Copperweld*)[193] support the conclusion that a parent corporation and any subsidiary corporation of which the parent owns more than 50 percent of the voting stock are a single economic unit under common control and are thus legally incapable of conspiring with one another within the meaning of section 1.[194] If a parent company controlled a significant but less than majority share of the voting stock of a subsidiary, the Department would make a factual inquiry to determine whether the parent corporation actually had effective working control of the subsidiary.

In this case, the Department would likely view Alpha and its subsidiaries as a single economic entity incapable of conspiring among themselves because Alpha holds a majority voting stock interest (100 percent, 60 percent, and 56 percent, respectively) in each of them. Alpha's sale of its majority interests in the German and Canadian subsidiaries would probably not change that conclusion. Alpha would retain nearly a majority stock interest and apparent effective working control since it appears that the remaining stock interests in both subsidiaries would be held by passive investors that do not represent any independent competitive interests. As a practical matter, Alpha and the subsidiaries should continue to function as a single economic entity, and there would be no change in the essential competitive situation. If it appeared, however, that Alpha relinquished effective working control over either subsidiary, then Alpha and that subsidiary would not be viewed as a single economic entity, and any agreement between them would be subject to normal antitrust rules under section 1 of the Sherman Act.

Case 10—Vertical Restraints in a Patent License

AutoGlass Corporation is a leading U.S. producer of windshields and other automobile glass. It markets these products to automakers and in the automotive aftermarket throughout the world. AutoGlass has no other business. AutoGlass invents a new, scratch-resistant transparent coating for automobile glass applications and obtains U.S. and foreign product patent protection for this material, which it calls AGPLEX. AutoGlass discovers broad interest in AGPLEX from safety eyeglass manufacturers, who believe that such a material would revolutionize the safety eyeglass market because of the superiority of AGPLEX-coated safety eyeglasses as compared to the uncoated

[189] *See* I.B. 4., *supra*.

[190] 467 U.S. 752 (1984).

[191] *Id.* at 771, 777.

[192] *Id.* at 767.

[193] *Id.* at 767–777.

[194] This standard is consistent with the Department's longstanding practice under section 7 of the Clayton Act of treating as a merger any stock acquisition that would facilitate coordination of the price and output decisions of the acquiring and acquired firms. The acquisition of more than 50 percent of the stock of another firm, for example, is always treated as a merger despite the continued existence of a significant minority interest. In such cases, the Department presumes that the acquired and acquiring firms will coordinate their behavior. Of course, the Department may also challenge under section 7 stock acquisitions that involve less than 50 percent of the stock of the acquired company.

safety eyeglasses that currently dominate the market, which are prone to scratching and breaking.

Amer-Eye Company, one of many safety eyeglass manufacturers in the United States, obtains an exclusive, field-of-use license under AutoGlass' U.S. patent to make and sell safety eyeglasses coated with AGPLEX in the United States. Amer-Eye's AGPLEX license forbids Amer-Eye from manufacturing and selling safety eyeglasses coated with any other material. Amer-Eye is not prohibited from continuing to manufacture and sell uncoated safety eyeglasses. The license requires Amer-Eye to pay royalties based on its total unit sales of safety eyeglasses, regardless of whether they are coated with AGPLEX.

British Optics Corporation, one of several British safety eyeglass manufacturers, is granted an exclusive license by AutoGlass to make and sell safety eyeglasses coated with AGPLEX in the United Kingdom and in all other member countries of the EEC. British Optics' license is subject to the same manufacturing restriction and royalties payment provision that are contained in Amer-Eye's license. British Optics has been selling safety eyeglasses in the United States (accounting for five percent of U.S. consumption) and would have liked a license under AutoGlass's U.S. patent, as well. Otherwise, British Optics cannot sell safety eyeglasses coated with AGPLEX in the United States.

AutoGlass's licenses of its other patents throughout the world have no arguable effect on U.S. commerce.

Discussion

As is the case with international agreements generally, the Department's consideration of the patent licenses in this case would be limited to the effects of the licenses on U.S. commerce. Otherwise, the Department's substantive analysis of the licenses in this case would be identical to its analysis of similar agreements in a purely domestic context.

Rule of Reason Analysis

Unless the underlying transfer of technology is a sham, or the license restrictions restrain competition between the licensor and licensee and bear no relationship to the underlying transfer of technology, the restrictions in an intellectual property license are analyzed under the rule of reason. There is no indication that the licenses to Amer-Eye and British Optics in this case are a sham or that any of the restrictions would restrain competition between either of them and AutoGlass. The licenses appear to be of great value to the licensees. Therefore, the Department would analyze the licenses in this case under a rule of reason.

This case demonstrates application of the rule of reason to purely vertical restraints in a patent license. AutoGlass does not compete in the safety eyeglass market, and there is no indication that either Amer-Eye or British Optics compete with AutoGlass in any relevant technology market. The license therefore does not restrain horizontal competition between AutoGlass and its licensees.

The license restrictions in this case would be anticompetitive only if they would (i) facilitate collusion in the sale of all safety eyeglasses [195] or in the licensing of technologies that compete with AGPLEX or (ii) exclude competing technologies from the market by "tying up" so much of the potential eyeglass manufacturing capacity that no competing technology could effectively enter the market. In determining whether any or all of the vertical restraints in Amer-Eye's license in this case would be anticompetitive, the Department would apply the rule of reason analysis set forth in Part I.B.4.

On the facts of this case, the Department could quickly conclude that neither collusion nor anticompetitive exclusion is likely. First, it does not appear that the restrictions in this case would facilitate collusion with respect to the output and/or pricing of either safety eyeglasses or coating technologies. None of the license restrictions would tend to facilitate collusion among the many competing safety eyeglass manufacturers in the United States—the grant of an exclusive license to one of those manufacturers would not enable AutoGlass to help police a cartel among safety eyeglass manufacturers or make it any easier for all safety eyeglass manufacturers to reach agreement. Nor, on the facts of this case, does it appear that the license is intended to or would have the effect of facilitating collusion among AutoGlass and owners of competing technologies, since no other competing technologies appear to exist. Moreover, even if competing coating technologies are developed, AutoGlass's prior decision to grant only one U.S. license would not appear to make collusion between AutoGlass and any other competing technology owner any more likely than if AutoGlass tried to exploit the safety eyeglass field on its own.

Second, it does not appear from the facts of this case that the license restriction would exclude rival technologies from the market. There are many other safety eyeglass manufacturers in the market that could develop and use competing technologies. There also is no indication that entry into the manufacture and sale of safety eyeglasses would be difficult.

The Department would not be concerned about the ability of manufacturers of non-coated safety eyeglasses to compete with Amer-Eye. The antitrust laws do not condemn even monopolies that are obtained through the offering of superior products. Nor do they require patentholders to make their technology open to all. Others are free to attempt to develop technologies that would compete with AGPLEX and, in the meantime, AutoGlass and its licensees are entitled under our patent laws to enjoy whatever competitive advantages may result form AutoGlass's innovation.

Because it is clear that the license arrangements in this case are not anticompetitive, it is irrelevant whether the restrictions in those licenses are efficient. The Department would determine not to challenge the restrictions without further analysis. Even in the rare case where vertical restrictions in a technology license raise a significant anticompetitive risk, however, the Department would consider their procompetitive benefits before condemning them. The following are some of the beneficial competitive effects of the restrictions presented in this case.

Exclusive Licenses. The principal value of a patent is the right to its exclusive use, and a licensor may properly seek to transfer this right to another in the form of an exclusive license to practice the patent generally, or for a specific purpose. Licensing the patent in this way may maximize the return on the patentee's investment in innovation. Exclusivity also may facilitate more efficient development and promotion of the patent by the licensee without fear of free-riding from other licensees (or even the patentee). For example, it may encourage the licensee to develop mini-innovations which, although they may not be patentable, would nevertheless make the technology more valuable to

[195] If AGPLEX proved to be so superior to uncoated safety eyeglasses that it truly monopolized the relevant market, then the coordination of competition among producers of AGPLEX-coated eyeglasses would not violate the antitrust laws. Those laws do not require an intellectual property owner to create competition in its own technology. The collusion concern would exist only if the licenses and their restrictions would facilitate collusion among competitors in a larger market (if one exists) that includes uncoated safety eyeglasses and eyeglasses coated with some substance other than AGPLEX.

consumers.[196] While this case involves an exclusive field-of-use license, other forms of exclusive licenses—for example, granting the licensee exclusive rights to sell the patented product in some area of the United States or to some class of customers—provide similar benefits, and the Department analyzes such restrictions under the rule of reason as well.[197]

Restriction on Use of Competing Technologies. AutoGlass's requirement that Amer-Eye use only AGPLEX to coat its safety eyeglasses can also be procompetitive.[198] This restriction gives Amer-Eye a strong incentive to develop and aggressively market the licensed technology.

Royalties Based on Total Sales. The Department generally is not concerned with the amount of license royalties or the way in which license royalties are paid. Licensees will pay for the licensed technology what they think the technology is worth. Moreover, various types of royalty payment provisions such as, for example, package licensing and royalties on sales of products made from a patented process, encourage licensees to develop and promote the licensed technology efficiently by enabling the licensee to use the technology in combination with other inputs in order to produce the final product at the lowest possible cost. Such restrictions also may save licensors the costs of monitoring licensees' production to determine how much of that production utilizes the licensed technology. The total-sales royalty provision in this case also effectively supports the prohibition on the licensees' use of other coating materials.

Case 11—Exclusive Patent Cross-Licenses With Grantbacks

Alpha Corporation, a U.S. Firm, is the second largest seller of product X in the United States. Beta Corporation, a Japanese firm, is the largest seller of X in Japan. Alpha and Beta each possess both U.S. and Japanese process patents covering certain technologies they use in manufacturing product X. Alpha and Beta do not currently market significant amounts of X in each other's home country.

Alpha and Beta agree to cross-license one another to practice their relevant foreign patents. Alpha grants to Beta the exclusive right (exclusive even of Alpha) to practice Alpha's Japanese patents, and Beta grants to Alpha the exclusive right (exclusive even of Beta) to practice Beta's U.S. patents. Each license has an exclusive grantback clause: If Beta makes any patented improvements on Alpha's technology, Beta will assign the U.S. rights to such improvements to Alpha; if Alpha makes any patented improvements on Beta's technology, Alpha will assign the Japanese rights to such improvements to Beta. Alpha and Beta also agree that if either of them makes any improvements on its own technology, an exclusive license will be granted to the other party to practice such improvements in the other party's home country. Finally, Alpha and Beta agreee that X they produce with licensed technology will not be marketed in the home country of the other party. In sum, the overall effect of the license arrangements between Alpha and Beta is that Alpha will have the exclusive right to practice both its own and Beta's technology, and all improvements thereon, in the United States and Beta will have comparable rights in Japan.

Discussion

As is the case with international agreements generally, the Department's consideration of the process patent licenses in this case would be limited to their effects on U.S. commerce. Otherwise, the Department's substantive analysis of these arrangements would be identical to its analysis of similar technology licensing arrangements arising in a purely domestic context.

Rule of Reason Analysis

Unless the underlying transfer of technology is a sham, or the license restrictions restrain competition between the licensor and licensee and bear no relationship to the underlying transfer of technology, the restrictions in an intellectual property license are analyzed under the rule of reason.[199] Here, there is nothing to suggest that the technology being transferred is valueless or insignificant to each licensee in the manufacture of product X.

The license arrangements in this case contain several types of restrictions that are frequently found in international patent licensing arrangements. First, each party, as licensee, has agreed to grant back to the licensor rights in any improvements that the licensee develops in the licensor's technology. Second, each party, as licensor, has agreed to grant the licensee rights to practice any improvements that the licensor develops in its own technology. Third, all of the existing and future rights being granted are exclusive—even as to the granting party. Finally, the licenses have the effect of restricting competition between the parties in the marketing of products they produce using the licensed technologies.

In this case, the cumulative competitive effect of the license restrictions is indistinguishable from an acquisition by Alpha of Beta's technology insofar as its use to compete in the United States is concerned. Although the Department would consider the cumulative competitive effects of the license and its restrictions, it would be helpful to discuss each of the restrictions individually, since they need not be used together in a license. Because Alpha and Beta own competing technologies for producing X,[200] restrictions contained in the cross-licenses on Alpha's and Beta's use of those technologies are properly analyzed as horizontal restraints.

Cross-Licensing. In general, the cross-licensing of competing or potentially competing technologies is procompetitive because it expands access to technology. In this case, for example, the cross-license allows Alpha and Beta each to use an alternative technology to which it otherwise would not have access, but which may be more efficient than its own technology. The license arrangement in effect allows Alpha and Beta to choose between the technologies based on their relative

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[196] *See* "The Antitrust Implications of International Licensing: After the Nine No-no's," Remarks by Charles F. Rule before the Legal Conference sponsored by the World Trade Association and the Cincinnati Patent Law Association (Oct. 21, 1986).

[197] The exclusivity of British Optics' license to make and market safety eyeglasses coated with AGPLEX in the EEC would not appear to affect U.S. consumers. The fact that would-be American exporters of AGPLEX-coated safety eyeglasses will not possess European AGPLEX licenses, and thus may not be able to sell such eyeglasses in the EEC, would not have the requisite direct effect on U.S. commerce to trigger antitrust concern.

[198] The similar restriction in British Optics' license would not appear to affect U.S. commerce. *See* n. 197.

[199] For example, exclusive cross-licensing arrangements with exclusive grantback features, such as the arrangements in this case, can conceivably be used anticompetitively by firms that currently compete or that foresee such competition, and wish to eliminate or forestall it by entering into sham licensing arrangements that divide territories or customers, or otherwise allocate markets.

[200] For the purpose of this case, it is assumed that the technologies owned by Alpha and Beta are substitutes. As a practical matter, however, it often is difficult to determine whether particular technologies are substitutes, complements, or both. For example, while X produced using either Alpha's or Beta's technology may be viewed as functionally interchangeable by consumers, it may be possible to produce X more efficiently using the technologies of Alpha and Beta together, rather than by using either technology alone. In other cases, patents may be pure complements, or may be blocking (such that one cannot be used without the other), and thus may not be substitutes at all.

efficiencies in producing X. Similarly, if their technologies are at least partially complementary (that is, if in some circumstances, they would be more efficient when used together), the cross-license may enable Alpha and Beta to compete more effectively against the owners of other technologies. The cross-license may also allow Alpha and Beta to avoid protracted and expensive, good-faith litigation over the validity and infringement of their respective patents.

Grantbacks. A grantback feature in a patent license also is often procompetitive.[201] Where practicing a patent is likely to lead to further innovations in the patented technology (whether or not such innovations are patentable), a grantback may enable a patentee to avoid the possibility that such innovation by the licensee will either make obsolete the patentee's own technology or effectively prevent the patentee from itself developing further improvements in its technology.

A grantback also may serve to compensate the patentee for improvements developed by the licensee that the licensee could not have developed without access to the patentee's technology. In this case, for example, where Beta's ability to develop improvements on Alpha's technology may require actual practice of Alpha's patents, Alpha is entitled to be compensated for conferring this benefit on Beta, and a grantback of any U.S. rights to such improvements is a logical choice for such compensation. Such a grantback could also increase the efficiency of bargaining for a license,[202] which directly benefits the parties and ultimately inures to the benefit of consumers.

Conveyance of Rights to Future Improvements by Licensor. The fundamental purpose of a patent license, like other technology transfers, is to allow the licensee to use the technology efficiently to his and the licensor's mutual benefit, as well as to the benefit of consumers. Such use often will require significant investment by the licensee. Licensees may be reluctant to make such investments, however, if there is a significant risk that the patentee will improve the underlying technology and make the originally-licensed technology obsolete. Thus, just as a grantback may protect a licensor from adverse effects deriving from improvements on the licensed technology by the licensee, an agreement allowing the licensee to use any improvements in the technology developed by the licensor can protect the licensee's investment in the technology.

Exclusivity. Exclusivity associated with patent cross-licenses and grantbacks is also generally procompetitive. Exclusivity is in fact inherent in the patent grant itself; the patent laws do not require patentees to create additional competitors. Exclusivity may also encourage licensees to maximize their promotion and utilization of the licensed technology without free-rider concerns, and allow a patent owner to maximize the return on his investment in R&D efforts to acquire the patent.

Restriction on Competition between Licensor and Licensee. Currently, U.S. patent law does not forbid the importation and sale of products made overseas with a process patented in the United States.[203] Although a U.S. process patentee may have other rights to prevent such importation and sale,[204] restrictions in process patent licenses that guard against such importation and sale can be procompetitive by enabling the U.S. process patent owner to exploit his technology more effectively overseas without fearing that such licensing will disrupt his exploitation of the technology in the United States.

As noted above, the cumulative effect of the licensing arrangement, insofar as U.S. commerce is concerned, is the effective acquisition by Alpha of Beta's technology, including any of Beta's improvements on that technology, with respect to its application in the United States. If an outright acquisition of Beta's technology would not violate the antitrust laws, then neither would these licenses violate the law. The Department would therefore begin its analysis in this case by defining, and examining the structure of, the relevant market in which the technologies of Alpha and Beta compete. That market would include (i) all other technologies that appear to be functional substitutes for the licensed technologies in producing X and (ii) technologies used to produce products that are reasonable substitutes for X to which consumers would switch if the price of X were significantly increased. After identifying the technologies the market (which typically will be international in scope),[205] market shares would be assigned that reflect the relative efficiency of those technologies.

The Department's analysis of technology markets is generally a qualitative one, focusing on the relative efficiency of the available technologies and the time that it would like take for comparably efficient alternative technologies to be brought to the market. Where technologies have been in competition for some time (for example, in this case, the technologies used to produce the current generation of X and close substitutes for X), differences in market share may be a reasonable proxy for differences in the relative efficiency of technologies. In cases involving emerging technologies, where there are no available proxies for the relative efficiency of technologies, the Department must qualitatively assess the likely future strength of such technologies in the market as well as whether alternative technologies would likely be brought to the market sufficiently promptly so as to undercut any attempted exercise of market power.

In the case, the Department would consider a number of factors. First, among other factors, the Department would consider whether X accounts for such a small share of the relevant produce market that any attempt to exercise market power with respect to technologies used to produce X would be frustrated by consumers switching to close substitutes for X.[206] Second, the Department would consider whether other firms also possess patents or valuable know-how that could be used to produce X or to produce products that would be close substitutes for X. Third, the Department would consider whether the patents of either Alpha or Beta have

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[201] *See* Transparent-Wrap Machine Corp. *v.* Stokes & Smith Co., 329 U.S. 637 (1947) (holding that a grantback is not per se unlawful); *see also* ABA Antitrust Section, Monograph No. 6, U.S. Antitrust Law in International Patent and Know-how Licensing 53–62 (1981).

[202] Essentially, the grantback functions as consideration to the patentee in a contract to develop the licensed technology, in which the price has been determined ex ante (in the form of a grantback), rather than ex post (that is, after the improvements have been achieved), when bargaining might be difficult because of the bilateral monopoly position of the parties.

[203] The Congress, however, frequently has considered amendments to the patent laws that would close this loophole: *see, e.g.*, S. 539, 100th Cong., 1st Sess. (1987).

[204] *See* section 337a of the Tariff Act of 1930, 19 U.S.C. 1337a.

[205] Patents, of course, grant exclusive rights to the use of the underlying technology only to the geographic extent of the granting authority's jurisdictional reach. For example, a patent granted by the U.S. Patent and Trademark Office provides only the exclusive right to make, use, or sell the patented invention in the United States. Technologies typically are granted intellectual property protection in various national markets. And as a general matter, a technology developed and patented in Japan can readily be patented and transferred to compete in the United States.

[206] As discussed in part I.B.5. of these Guidelines, individual patents and patented products may compete in a market with many other economic substitutes.

expired or are soon to expire, such that other firms could use the technologies (or improvements or variations thereon) to produce a product that would compete with X or close substitutes for X.

If X sales account for only a small share of the relevant product market that includes X, for example, the licensing arrangement in this case may be important to enable Alpha (in the United States) and Beta (in Japan) to compete more effectively against other products in the market, but it may confer no market power on either or both of them. On the other hand, if there were no close substitutes for X and the licensed technologies would be clearly superior to all available alternative technologies for making X, then an effective acquisition by Alpha of Beta's technology as applied in the U.S. market for X might be anticompetitive. Because in this case it appears that there are producers of X other than Alpha and Beta, it is not clear the extent to which this license would increase concentration in the relevant market. Moreover, the Department would consider the other relevant market factors that would be considered when evaluating a merger or acquisition.[207]

If the Department concluded after examining all of the relevant circumstances that the licensing arrangement in this case would have a significant anticompetitive effect, then the Department would consider whether competitive benefits that would result from the arrangement would outweigh the likelihood of anticompetitive harm. As noted above, by eliminating the possibility of competition from one another, Alpha and Beta each may be better able efficiently to develop and market their combined technologies. It may be difficult to develop consumer acceptance for their technologies unless substantial investment is made in education and training. In that case, particularly if there were other available technologies in the market, the net effect of the restrictions might be procompetitive. If the licensing arrangement would have significant anticompetitive effects, the burden would be on the parties to show that the benefits resulting from it would outweigh those effects.

Case 12—Know-How Technology Transfer Agreement With Exclusive Territories

Alpha Corporation is a small, but growing, Massachusetts corporation that possesses valuable unpatented know-how that is used to produce product X. Alpha has not been successful in exporting X to other countries. Alpha proposes to enter into a twenty-year technology transfer agreement with a German firm, Beta Corporation, under which Alpha will convey its know-how to Beta. Beta is a large, well-financed multinational corporation that does not currently produce X, but produces closely related products and wishes to produce and sell X in the EEC. As part of the technology transfer agreement, Beta will agree not to sell X in the United States, whether it is manufactured with Alpha's know-how or any other technology, for the duration of the agreement.

Alpha is negotiating a similar agreement with Epsilon Corporation, a large Japanese firm which currently produces X. Epsilon's technology has permitted it to obtain only a small share of the Japanese market, and to make even more limited sales in the United States. Epsilon believes that Alpha's technology will increase Epsilon's production efficiency and improve the quality of the X it produces. Epsilon insists that Beta be barred from selling X in Japan, Australia, and East Asia. The prohibition would apply to all X produced by Beta, whether or not it was produced using Alpha's know-how.

Discussion

As is the case with respect to international agreements generally, the Department's consideration of the know-how transfer agreements in this case would be limited to their effects on U.S. commerce. Otherwise, the Department's substantive analysis of the agreements would be identical to its analysis of similar technology licensing arrangements arising in a purely domestic context.

Know-How

Know-how is useful technical information concerning productive activity that is not generally known or accessible but is not protected by a patent.[208] Like patented technology, know-how represents the fruits of inventive activity that is stimulated by the legal protection of property.[209] Because of the essentially similar roles that know-how transfers and patent licensing play in the competitive process, the Department generally analyzes them in the same way. In fact, precisely because know-how is not statutorily defined and protected by a government grant, restrictions in agreements transferring know-how may be even more essential to protecting procompetitive investment in valuable technology. Because know-how is not necessarily susceptible to precise definition, however, in some cases it may be more difficult to distinguish a legitimate know-how transfer from a sham arrangement shielding a naked cartel. In appropriate cases, therefore, the Department may be required to determine whether the know-how that is transferred is of significant economic value.

Rule-of-Reason Analysis

Unless the underlying transfer of technology is a sham, or the license restrictions restrain competition between the licensor and licensee and bear no relationship to the underlying transfer of technology, the restrictions in a know-how license are analyzed under the rule of reason.[210] That analysis focuses on whether a restriction in such an agreement would likely lead to the unilateral or concerted exercise of market power in any market.

The proposed agreements in this case involve restrictions commonly found in international technology licensing arrangements. Beta and Epsilon will be restricted from using Alpha's know-how to compete with Alpha in selling X in the United States. Indeed, Beta and Epsilon will be restricted from selling X manufactured by any means in the United States. Finally, Beta will be restricted from selling X, regardless of how it was manufactured, in foreign markets that Epsilon wishes to reserve for itself. Although the restrictions have procompetitive potential as discussed below, the Department would not challenge a know-how licensing arrangement that, under the relevant circumstances, did not raise a significant anticompetitive risk, regardless of whether the parties could establish the competitive benefits of the restrictions.

Restriction on Sale of X in Competition with Licensor

In this case, Beta and Epsilon are not identically situated as existing or potential competitors of Alpha in the

[207] *See* I.B.2., *supra*.

[208] *See* Kilpatrick and Mahinka, "Antitrust and the International Licensing of Trade Secrets and Know-how: A Need for Guidelines," 9 Law & Pol'y in Int'l Bus. 725, 728 (1977).

[209] *See* Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 485 (1974).

[210] If the transferred know-how in this case were of trivial importance to the efficient production of X, for example, the agreement might be a mere sham intended to restrict output and raise the price of X. There is no indication in this case, however, that Alpha's know-how is valueless to Beta and Epsilon and merely an excuse for Alpha, Beta, and Epsilon to form a cartel for the sale of X.

U.S. X market. Epsilon possesses competing technology, and does in fact compete with Alpha in the relevant market. Thus, the Department would analyze the restriction on Epsilon's sales of X in the United States—to the extent such sales are or could be made without access to Alpha's know-how—as a horizontal restraint. The effect of the restriction may be approximated to that of a merger of Alpha and Epsilon. The Department would therefore identify the relevant market for X as set forth in the Merger Guidelines and determine whether the structural and other characteristics of that market might subject it to the exercise of market power if Epsilon and Alpha coordinated the price and output of X. The Department would analyze the cumulative effect of Alpha's license to Epsilon in view of Alpha's license to Beta, which excludes Beta from entering the U.S. market for X.

Beta, on the other hand, does not currently compete with Alpha in the U.S. market for X and does not appear from the facts of this case to be a potential competitor [211] in that market through the development of its own technology. The Department's concern with this restriction would be with its possible exclusion of X produced with competing technology from the U.S. market. Under the terms of the license, Beta cannot provide an entry vehicle for X produced with technologies that compete with Alpha's. If Beta were uniquely capable of developing competing know-how and entering the U.S. market with it, then the restriction in Beta's license could be anticompetitive, assuming that Alpha (alone or in tacit concert with a few other leading competitors) had market power. However, if Beta were not uniquely positioned to use competing technology, if there were several firms that could sell X in the United States using their own competing technologies, or if the U.S. market for X were not highly concentrated, then the restriction in Beta's license would have no anticompetitive effect.

If the foregoing analysis showed that excluding Beta and/or Epsilon from selling X in the United States could be anticompetitive, the Department would determine whether the risk of anticompetitive effects would be outweighed by the restriction's procompetitive effects. The restriction on sales of X by Beta and Epsilon in the United States could be procompetitive by encouraging transfer of the know-how in the first place. As is true with respect to all forms of intellectual property, the creator of know-how is not required to transfer it, and may not do so if he would thereby reduce the value of the know-how. Extending the prohibition to all X, no matter how it is produced, could save Alpha—and probably Beta, Epsilon, and consumers as well—the costs of monitoring compliance with a narrower restriction. It might be difficult, for example, for Alpha to discover and prove that a particular product was made using its know-how. Moreover, even if Alpha could prove that a product was made using know-how very similar to its own, there might be significant dispute and litigation to resolve whether the transferee's know-how was developed independently. Of course, in this case, U.S. consumers would not be the primary beneficiaries of the transfer of Alpha's know-how to Beta and Epsilon. Therefore, depending on the nature and the degree of the anticompetitive risk, the Department might determine that the license should not restrict Beta and/or Epsilon from selling in the United States X made using other technologies.

Foreign Territorial Restrictions on Licensees

The territorial restriction on competition between Beta and Epsilon would not appear to have any direct effect on U.S. commerce and would therefore not fall within the subject matter jurisdiction of the U.S. antitrust laws.[212] Even in a domestic context, however, the grant of exclusive territories to licensees of a single technology generally would not be anticompetitive. Such restrictions often will promote the development and dissemination of the technology—indeed, the assignment of exclusive territories may be viewed by the licensor as necessary to encourage licensees to invest the resources required to develop and exploit the licensed technology and to invest in "mini-innovations" that would significantly increase its value.

Case 13—Anticompetitive Use of Section 337

Alpha Corporation, a major U.S. chemical company, is the sole U.S. producer of product X, an artificial fiber with unique and valuable properties. Alpha owns a U.S. process patent covering its technology for producing X.

Beta Corporation, a small Italian specialty chemical producer, has developed a new, substantially less costly process to produce X. Although Beta has never sold X outside of Italy, it decides to explore marketing opportunities in the United States. Beta's new process would enable it to sell X profitably in the United States at a lower price than Alpha can profitably offer.

Alpha, believing that Beta's imports would threaten Alpha's X sales in the United States, files an action under section 337 of the 1930 Tariff Act [213] to prohibit the importation of Beta's X into the United States, alleging that Beta's process is covered by Alpha's U.S. process patent. Alpha's technical staff has advised Alpha's management that Beta's process is substantially different from and outside the scope of, Alpha's patent. Alpha's management nevertheless initiates the section 337 case, hoping that the cost delay, and uncertainty resulting to Beta from having to defend the proceeding will deter Beta, and ultimately others, from attempting to compete in the United States.

Discussion

Section 337 of the 1930 Tariff Act permits the U.S. International Trade Commission to order the exclusion of imported products that infringe domestic intellectual property rights or that are made abroad using a process that is protected by a U.S. process patent. Like other laws that protect rights in intellectual property, when properly used, section 337 helps to preserve incentives for the procompetitive creation and efficient exploitation of innovative technology.[214]

If Alpha had a reasonable basis for believing its process patent covered Beta's process, Alpha's invocation of section 337 procedures to seek the exclusion of Beta's X would be perfectly lawful. In this case, however, Alpha does not believe that its process patent is infringed by Beta's technology. Alpha's purpose in filing the action is not to protect its process patent rights, but to exclude a rival's noninfringing product from the United States by imposing prohibitive additional costs on its sales into the United States.

The Supreme Court has held that a firm's efforts to obtain action by the U.S. federal government or any state government does not violate the Sherman Act even when the result of that action would be anticompetitive.[215]

[211] *See* Case 3 and Mergers Guidelines section 4.

[212] *See* I.C.1., *supra; See also* Foreign Trade Antitrust Improvement Act, 15 U.S.C. 6a (1982).

[213] 19 U.S.C. 1337a (1976).

[214] *See generally* discussion at I.B.5, *supra.*

[215] *See* Eastern R.R. Presidents Conf. v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961); United Mine Workers v. Pennington, 381 U.S. 657 (1965); California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972) (extending protection to the seeking of redress in the courts); *see also* I.F., *supra.*

The *Noerr-Pennington* doctrine does not, however, protect petitioning activity that in fact is a mere "sham" concealing "what is nothing more than an attempt to interfere directly with the business relationships of a competitor."[216] Alpha's conduct in filing what it believed to be a meritless claim appears to fall within the sham exception. Where such misuse of governmental processes is part of a scheme to monopolize a relevant market, it might violate section 2 of the Sherman Act.[217]

On the other hand, if Alpha merely had some doubt as to whether Beta's process infringed its patent when it filed the 337 action, a sham would not be established even if Beta ultimately prevailed in court. Because the very nature of an action under section 337 is to exclude a competitors' products, such an action should not be considered to be a sham unless the petitioner believed it to be baseless. Only then is it possible to conclude that the petitioner's only genuine motivation is to interfere directly with the legitimate business relationships of a competitor.

Case 14—International Cartel Activities

Alpha Corporation, a large multinational corporation incorporated in Delaware, mines X-ore abroad and processes it into X-product, which it sells in the United States and other countries. Alpha owns 75 percent of a subsidiary which it organized in Country A to operate a large X-ore mine there.

Beta Corporation, which is headquartered in Country A, mines X-ore in five overseas countries and sells X-ore and X-product in a number of countries, including the United States. A majority of the common stock of Beta is owned by the Delta Investment Corporation, a diversified investment company which is in turn majority owned and controlled by the government of Country A.

Epsilon Corporation is a European-based fruit company that sells large quantities of fruit juices through its own retail outlets located in the United States. Epsilon recently discovered a very large X-ore deposit on one of its overseas fruit plantations, and has been selling X-ore abroad.

Beta, Epsilon, and the four other foreign X-ore producers (but not Alpha) recently attended a secret meeting in Country A at which they formed a cartel and agreed on quotas and prices for all of their X-ore production. Beta is the only one of these foreign X-ore producers that sells X-ore or X-product directly to purchasers in the United States, but the others all sell substantial amounts of X-ore to foreign brokers. The cartel members collectively account for a large portion of the world's X-ore production, and with Alpha would account for substantially all world X-ore production. More than 25 percent of world X-ore production is consumed in the United States. The government of A has notified Alpha that it wants Alpha to pledge to the cartel members that it will abide by the agreed-upon quotas and prices.

Discussion

This naked, private cartel agreement among horizontal competitors to fix the price and quantity of a product sold to U.S. consumers would be prosecuted—probably criminally—as a clear violation of the U.S. antitrust laws unless considerations of comity, foreign sovereign compulsion, or foreign sovereign immunity counseled otherwise with respect to particular defendants. The only possible effect of the agreement would be to reduce output and raise the price of X-ore; the agreement is unrelated to any integration of assets or operations that might achieve significant efficiencies. Moreover, the parties have entered into the agreement secretly in an attempt to conceal the true nature of their activities and to defraud consumers into believing that they are benefitting from active competition among X-ore producers. In view of the large percentage of world X-ore production that is sold in the United States, it seems clear that the cartel would have a direct, substantial, and reasonably foreseeable effect on U.S. import trade, and thus the Department would consider challenging it under section 1 of the Sherman Act.[218]

For reasons explained in Part I of these Guidelines, the Department generally will not seek to prosecute anticompetitive conduct that a foreign sovereign actually compels under circumstances in which a refusal to comply would give rise to significant penalties, the foreign sovereign's command is within the scope of its authority under its own laws, and U.S. deference to the foreign sovereign's action is warranted under the circumstances.[219] In this case, however, the fact that the government of A has importuned Alpha to abide by the cartel agreement would not excuse Alpha's participation. Although the government of A has made it clear that it wishes Alpha to join the cartel, it has not attempted to compel Alpha to do so.

Due to considerations of comity, the Department might refrain from prosecuting conduct that has arisen from the decision and action of a foreign sovereign even in the absence of strict legal compulsion.[220] It does not appear that considerations of comity would lead the Department to refrain from prosecuting the cartel in this case, however. The cartel is neither required nor contemplated by any law or articulated economic policy of the government of A. The cartel also covers X-ore production and sales that occur substantially outside of Country A. Indeed, it appears that the cartel's purpose and effect is not primarily to regulate the economy of Country A, but rather to raise prices to consumers in the United States and other markets. Given the substantial effect the cartel would have on U.S. consumers, and the lack of any connection to legitimate regulation by Country A of its economy, there does not appear to be any reason to defer to the jurisdiction of Country A and refrain from prosecuting the cartel.

The fact that Beta is indirectly controlled by the government of A would not immunize Beta for its participation in the cartel. Immunity from suit under the Foreign Sovereign Immunities Act[221] does not extend to the commercial activities of an entity controlled by foreign government.[222]

The facts in this case do raise questions of personal jurisdiction with regard to some of the cartel members.[223] Alpha, which is a U.S.

[216] *Noerr*, 365 U.S. at 144.

[217] The offense of unlawful monopolization under section 2 of the Sherman Act has two elements: (i) the possession of monopoly power in a relevant market (i.e., the power to restrict output and raise price) and (ii) willful acquisition or maintenance of that power through anticompetitive or predatory acts, as opposed to growth or development as a consequence of superior product, business acumen, or "historic accident." *See* United States v. Grinnell Corp., 384 U.S. 563, 570–71 (1966). The offense of unlawful attempt to monopolize has three elements: (i) a specific intent to monopolize a relevant market; (ii) the use of anticompetitive or predatory means to obtain that end; and (iii) a "dangerous probability" that the attempt will be successful. If it appears that there is no dangerous probability of success, the Department will not inquire further. In assessing the probability of successful monopolization, the Department considers the market share of the firm and concentration in the market, ease of entry, ability of existing firms to expand capacity, and other factors bearing on the likelihood that the firm allegedly engaging in the attempted monopolization could actually exercise the power to restrict output and raise price.

[218] *See* discussion at I.B.1., *supra*.

[219] *See* I.E., *supra*.

[220] *See* discussion at I.D., *supra*.

[221] 28 U.S.C. 1605(a)(2).

[222] *See* I.C.2., *supra*.

[223] *See* Asahi Metal Industry Co. v. Superior Court of California, 480 U.S. 102 (1987).

corporation, and Epsilon, which has extensive (although unrelated) business operations in the United States, clearly are subject to the jurisdiction of the U.S. courts. Beta sells X-ore and X-product directly in the United States, and is therefore likely to have sufficient contacts with the United States to subject it to U.S. jurisdiction. Whether there is personal jurisdiction over the remaining foreign cartel members is less clear. Even if a potential defendant in a criminal antitrust action is outside the jurisdiction of the United States, however, the Department may file an indictment or other process against that individual or firm and hold it outstanding indefinitely. Moreover, if defendants possess property in the United States, under certain circumstances that property may be seized to induce their consent to the jurisdiction of a U.S. court.[224]

Case 15—Government-Imposed Export Restraints

Alpha Corporation, a corporation that is organized under the laws of Country A, is a wholly-owned subsidiary of Beta Corporation, a U.S. company. Alpha manufactures product X in Country A, and exports a portion of its X production to the United States. The other five X producers in Country A, which also sell X in the United States, are all locally owned.

The sales and profits of U.S. producers of X have fallen because of increased imports of X from Country A. U.S. producers of X have been seeking U.S. legislation that would substantially curtail X imports from Country A. The government of Country A is concerned that these legislative efforts might succeed. It therefore asks X producers in Country A to form an advisory council to advise the government on how to counter the threat of U.S. import barriers. Alpha joins the other X producers in Country A in advising the government of Country A to issue an order limiting the amount of X that may be exported to the United States and allocating the export quota among the X producers in Country A in proportion to their current U.S. sales. The government of Country A does so. Violations of the quota allocations are subject to significant sanctions by the government of Country A.

Discussion

The export restraint in this case has been imposed by the government of Country A. A foreign government's imposition of controls over exports by its own producers is normally considered to be a sovereign function of the state, and compliance with those controls is therefore normally not subject to U.S. antitrust enforcement regardless of its effect on U.S. commerce.[225]

The Department would not likely challenge Alpha's conduct in joining the X producers of Country A in recommending export restraints to the government of Country A. As discussed in Part 1 of these Guidelines, the Supreme Court has held that the Sherman Act does not make unlawful the collective petitioning of government by competitors even if the desired government action would have an anticompetitive effect.[226] What has become known as the *Noerr-Pennington* doctrine does not, however, protect collective activity that is in fact a mere "sham" concealing a direct restraint of trade by the parties. Examples of sham petitioning include the meritless invocation of administrative procedures to delay a competitor's entry or to deny it access to governmental processes, and deliberate misrepresentations to the government during such administrative proceedings.[227]

The major question presented in this case is whether the *Noerr-Pennington* doctrine or some analogous doctrine protects efforts to cause a foreign government to impose restraints that would have a direct and significant anticompetitive effect in the United States. Because the *Noerr* case itself turned on an interpretation or the Sherman Act in light of the constitutional guarantees of the First Amendment,[228] the *Noerr-Pennington* doctrine may not itself apply to the petitioning of foreign governments by U.S. or foreign firms.[229] Nevertheless, for reasons of comity, the Department generally will not prosecute the legitimate petitioning of foreign governments by foreign or domestic firms in circumstances in which the *Noerr-Pennington* doctrine would protect such activities in the United States.

On the facts of this case, the petitioning does not appear to be a sham. The Department would therefore not challenge Alpha's activity in joining with other X producers in Country A to recommend the imposition of export restraints.[230] The fact that this activity occurred in the context of an advisory council appointed by the government of Country A supports this conclusion, but the conclusion would be the same even if Alpha and the other X producers has proposed the restraints to the government of A on their own initiative.

Discussion

This case raises two issues. First, is there an agreement among the X producers in Country A? Second, would a U.S. antitrust enforcement action be appropriate in view of the involvement of the government of Country A and the request by the U.S. government officials that the government of A act to resolve the trade friction?

Agreement. As discussed at Part I.B.1., *supra*, an unlawful conspiracy to restrain trade under section 1 of the Sherman Act does not require an express agreement; a "meeting of the minds" is sufficient. As a general matter, mere parallel conduct, without more, is not enough to establish the requisite agreement. That is because parallel conduct by competitors in some cases can be equally consistent with both agreement and with independent decision-making. A conspiracy may well be inferred from parallel conduct, however, where the parties appear to have a rational economic motive for engaging in the conspiracy (e.g., to restrict output and raise price) and it would not be in the economic self-interest of individual firms to engage in the conduct alone.[231]

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[224] *See* 15 U.S.C. 6, 11.

[225] *See* Letter from William F. Baxter, Assistant Attorney General, Antitrust Division, Department of Justice, to Sir Roy Denman, Delegate Head, Commission of the European Commission (Oct. 21, 1982) (concerning steel export restraints); Letter from Sir Roy Denman to William F. Baxter, Assistant Attorney General, Antitrust Division, Department of Justice (Oct. 21, 1982) and attachments; Exchange of letters between William French Smith, Attorney General, Department of Justice, to Yoshito Okawara, Ambassador of Japan (concerning automobile export restraints), *reprinted in* U.S. Import Weekly (BNA) May 13, 1981, pp. M–1–M–2.

[226] *See* Eastern R.R. Presidents Conf. v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961); United Mineworkers v. Pennington, 381 U.S. 657 (1965); *see also* I.F., *supra* and Case 13.

[227] *See* discussion of anticompetitive use of section 337 of the 1930 Tariff Act at Case 13.

[228] Noerr, 365 U.S. at 138; *See also* California Motor Transport Co. v. Trucking Unlimited, 404 U.S. at 514–15.

[229] *See* Occidental Petroleum Corp. v. Buttes Gas & Oil Co., 331 F. Supp. 92, 108 (C.D. Cal. 1971), *aff'd*, 461 F.2d 1261 (9th Cir.), *cert denied*, 409 U.S. 950 (1972); Australia/Eastern U.S.A. Shipping Conf. v. United States, 537 F. Supp. 807, 812–13 (D.D.C. 1982). *But see* Coastal States Marketing, Inc. v. Hunt, 694 F.2d 1358, 1364–67 (5th Cir. 1983).

[230] Nor would the Department challenge the activities of U.S. X manufacturers in seeking legislated U.S. import restrictions. Since those activities involve the petitioning of the U.S. government, the *Noerr-Pennington* doctrine clearly would apply.

[231] Matsushita Electric Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986).

This case conceivably might involve a "hub and spoke" conspiracy, in which an independent third party (the "hub") coordinates collusion among competitors (the "spokes"). Comity considerations aside, if the Minister of A were acting as the coordinator for a private conspiracy among Country A's X producers to restrict exports to the United States, the Department might seek to prosecute this arrangement as an unlawful export cartel. The fact that the "hub" of the conspiracy is the Minister of A would not insulate the private-party "spokes" in the conspiracy.

Comity Considerations. Mere foreign government acquiescence would not shield privately-imposed anticompetitive restraints clearly aimed at a U.S. market. For reasons of comity, however, the Department would not likely challenge a voluntary export restraint that clearly arose from the decision and official action of the government of A in response to specific trade concerns expressed by the U.S. Government. As a matter of prosecutorial discretion, in deciding whether to challenge particular conduct, the Department would consider the potential impact of a U.S. antitrust enforcement action on Country A's national interests as well as on the United States' relationship with the government of Country A. The Department's action in a particular case would depend on the totality of the circumstances.[232]

Case 17—Settling a Trade Case

The three largest American producers of product X, which together account for 85 percent of domestic X production, have filed a petition under the U.S. trade laws seeking the imposition of antidumping duties on X imported from producers in Country A. Country A is the largest foreign source of X sold in the United States. The U.S. Department of Commerce has preliminarily found dumping margins [233] ranging from three to 40 percent, amounting to a weighted average among all respondents of 15 percent. Petitioners have continued to argue that the margins are substantially greater.

The X producers in Country A meet and decide to offer to settle the case with the U.S. X producers. A representative of the X producers' association in Country A informs counsel for the U.S. petitioners that each X producer in Country A will raise its U.S. prices by 15 percent if the U.S. firms agree to withdraw their petition.

Discussion

An agreement among domestic and foreign competitors to raise the price of products imported into the United States would be per se unlawful under the U.S. antitrust laws. The fact that the agreement purported to settle a dumping case would not constitute a defense.

An agreement among foreign competitors to restrict output and/or raise price in response to an antidumping investigation is exempt from application of the antitrust laws only to the extent that the agreement is reached and carried out strictly in accordance with the suspension agreement provisions of the antidumping law.[234] Congress has enacted detailed rules governing the effects of a suspension on the rights and obligations of affected domestic and foreign industries and setting forth the procedures that the Department of Commerce must follow before it may suspend an antidumping investigation.[235] The Commerce Department may suspend an antidumping investigation only when foreign firms accounting for substantially all of the relevant imports agree with the Commerce Department that they will (i) cease exports of the relevant product to the United States; (ii) eliminate sales made at less than fair value (LTFV); or (iii) eliminate the injurious effects of the exports by raising their prices to a level that does not completely eliminate the LTFV sales.[236] The Commerce Department must find the suspension agreement to be in the public interest following notice and comment by interested parties, including consumers.[237] If exporters or interested parties so request, the Commerce Department must continue the investigation even after it is suspended; if it ultimately is determined that the antidumping laws have not been violated, the suspension agreement is voided and the investigation is terminated.[238]

An agreement by exporters with respect to the price of their exports that met all of the relevant statutory criteria and safeguards and was accepted by the Commerce Department in accordance with the procedures set forth in the antidumping law would enjoy an implied antitrust exemption. No exemption, however, would extend to an agreement that was made outside or beyond the scope of the provisions of the antidumping law or to any anticompetitive provisions in a suspension agreement that were not necessary to comply with the antidumping law.[239]

In this case, the agreement proposed by the X producers of Country A to the U.S. petitioners to raise their prices would not qualify for exemption under the antidumping law. In particular, there is no implied immunity under the U.S. antidumping laws for private anticompetitive agreements between or among U.S. and foreign producers in connection with the withdrawal of an antidumping petition. If the U.S. X producers agreed to withdraw their petition on the basis of a promise by their foriegn competitors to raise the price of exports to the United States, both the U.S. and foreign producers would be subject to action under the antitrust laws. The additional fact that certain officials of the government of Country A suggested that X producers in Country A settle the U.S. trade case would provide no protection since compliance with this suggestion would not require the X producers to act outside the provisions of the antidumping law.

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[232] If the United States did decide that an antitrust action was appropriate under all of the circumstances, such an action would not be subject to dismissal in the U.S. courts on comity-related grounds. The Constitution charges the Executive Branch with responsibility for the conduct of the foreign relations of the United States. It would be improper for a court to review the constitutional actions of the Executive Branch in the case. *See* Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 425 (1964); Underhill v. Hernandez, 168 U.S. 250 (1897).

[233] Generally speaking, a dumping margin is the amount by which a foreign firm's domestic prices exceed the price of its exports to the United States or the amount by which its export prices to the United States are below its fully-allocated cost of production, whichever is greater.

[234] 19 U.S.C. 1673 et seq.

[235] 19 U.S.C. 1673c(b)–(j).

[236] 19 U.S.C. 1673c.

[237] 19 U.S.C. 1673c(d), (e); 19 CFR 353.42(h).

[238] 19 U.S.C. 1673c(g), (f)(3).

[239] *See, e.g.*, Letter from Charles F. Rule, Acting Assistant Attorney General, Antitrust Division, Department of Justice, to Mr. Makoto Kuroda, Vice-Minister for International Affairs, Ministry of International Trade and Industry (July 30, 1986) (concluding that a suspension agreement did not violate U.S. antitrust laws on the basis of factual representations that the agreement applied only to products under investigation, that it did not require pricing above levels needed to eliminate sales below foreign market value, and that assigning weighted-average foreign market values to exporters who were not respondents in the investigation was necessary to achieve the purpose of the antidumping law).

A detailed discussion of the provisions in various U.S. trade laws that allow agreements or other measures to restrict import competition is beyond the scope of these Guidelines. It is important to bear in mind, however, that private anticompetitive agreements entered into outside the specific framework of U.S. trade law provisions allowing for such agreements enjoy no exemption from the antitrust laws merely because they arise in the context of a trade dispute.

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